IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 543 - 15

THE WESTERN UNION TELEGRAPH COMPANY,
Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA, by SIDNEY GOTTLIEB, Escheator, Appellee

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT AND APPENDICES

JOHN G. BUCHANAN
JOHN G. BUCHANAN, JR.
REX ROWLAND
1800 Oliver Building
Pittsburgh 22, Pennsylvania
JOHN H. WATERS
60 Hudson Street
New York 13, New York
Attorneys for Appellant

BUCHANAN, INGERSOLL, RODEWALD,
KYLE & BUERGER
Of Counsel

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

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JURISDICTIONAL STATEMENT

The appellant, The Western Union Telegraph Company, a corporation of the State of New York, appeals from a decree of the Supreme Court of Pennsylvania entered on June 29, 1960, affirming a decree of escheat entered by the Court of Common Pleas of Dauphin County, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

A. Opinions of the Courts Below.

The opinion of the Supreme Court of Pennsylvania is reported at 400 Pa. 337, 162 A. 2d 617. The opinions of the Court of Common Pleas of Dauphin County are reported at 73 Dauphin County Reports 160 and 74 Dauphin County Reports 49. Copies of these opinions are attached as Appendix A.

B. Grounds on Which Jurisdiction Is Invoked.

1. This case arose on a petition for the escheat of money filed in the Court of Common Pleas of Dauphin County, Pennsylvania, by Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania, under the Pennsylvania Escheat Act of May 2, 1889, P.L. 66, as amended (27 Purdon's Statutes §§ 1, 41-111, 333).

2. The decree sought to be reviewed was filed on June 29, 1960, and appellant filed its notice of appeal in the Supreme Court of Pennsylvania on September 27, 1960.

3. The statutory provision believed to confer on this Court jurisdiction of the appeal is Title 28 U.S.C. § 1257(2).

4. Cases believed to sustain the jurisdiction are:
Standard Oil Co. v. New Jersey, 341 U.S. 428;
Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541;
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306;
Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282.

5. The statute of Pennsylvania the validity of which is involved is the Escheat Act of May 2, 1889, P.L. 66, as amended by the Act of July 29, 1953, P.L. 986 (27 Purdon's Statutes, §§ 1, 41-111, 333). The pertinent statutory provisions are attached as Appendix B.

C. Questions Presented.

This case involves the right of Pennsylvania under provisions of its escheat statute, the constitutionality of which is here in issue, to take money which a New York corporation received in connection with telegraphic money order transactions and sent to New York more than seven years before such provisions of the Pennsylvania statute were enacted. A substantial part of the money has been or may be claimed by New York. In connection with most of the transactions involved, negotiable drafts had been issued in states other than Pennsylvania, payable at banks outside Pennsylvania; in these transactions there is an additional conflict of escheat laws, between Pennsylvania and the states of situs of the negotiable drafts. A similar question, where insured persons or beneficiaries under life insurance policies were not residents of the state claiming jurisdiction to take proceeds by escheat, was expressly reserved in the six-to-three decision of this Court in *Connecticut Mutual Life Insurance Co. v. Moore,* 333 U.S. 541, at p. 549.

Other questions also are involved. In detail, the questions are as follows:

1. Is the Pennsylvania Act of May 2, 1889, P.L. 66, as amended (27 Purdon's Statutes §§ 1 *et seq.*), repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat to the Commonwealth of Pennsylvania of:

a. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, drawn and

delivered by a New York corporation outside Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

b. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, delivered by a New York corporation within Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

c. unclaimed amounts owed to persons, not shown to be residents of Pennsylvania, who paid corresponding amounts in Pennsylvania to a New York corporation in telegraphic money order transactions which could not be consummated;

all of the moneys which had been paid to the New York corporation in the transactions involved having been transferred to New York before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted?

2. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat of amounts under a petition directed solely to money of a corporation, which escheat does not bar the collection from such corporation, by other states or third persons, not parties to the proceedings, of claims based upon negotiable drafts and other choses in action?

3. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property

without due process of law, in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania, naming no claimants of the money residing there or elsewhere, even where the last known addresses of possible claimants are available?

D. Statement of the Case.

Prior to July 29, 1953, there was no Pennsylvania statute under which the Commonwealth of Pennsylvania could have claimed the right to escheat the amounts involved in these proceedings. On that date, the Pennsylvania Escheat Act of 1889, *supra,* which applied only to the escheat of property held by fiduciaries and to estates of intestates without known heirs or kindred, was amended to bring within its scope "every . . . form of personal property, tangible or intangible, and all interests therein, whether legal or equitable". Act of July 29, 1953, P. L. 986, § 5 (27 Purdon's Statutes § 111). The Commonwealth of Pennsylvania on December 21, 1953 (within five months after the amendment of the statute), began this proceeding against appellant by filing in the Court of Common Pleas of Dauphin County a petition for escheat under the Act.

The petition (R. 4-8*) alleged that in many instances appellant in conducting its money order service received at its places of business in Pennsylvania moneys from divers persons for transmission to other

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*All record references are to numbers at bottom of pages.

persons, but payment could not be effected. In all instances in which the whereabouts of the sender had been unknown to appellant and the moneys had been unclaimed for more than seven years the petition averred that the moneys had escheated to the Commonwealth and prayed that the court enter a judgment of escheat.

The appellant in its answer (R. 8-16) raised the following federal questions which it is asking this Court to review:

1. Since the amounts sought in the petition are not subject to the control of the Commonwealth of Pennsylvania, the Act of 1889, as amended, *supra,* is unconstitutional if it purports to cause an escheat of these amounts to the Commonwealth of Pennsylvania in that it deprives the appellant of property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States (R. 13-14);

2. Such an escheat would subject the appellant to multiple liability in that it would not bar the collection from the appellant, by other states or third persons, of claims for the same amounts, in violation of the due process of law provision of the Fourteenth Amendment to the Constitution of the United States (R. 15-16);

3. The Act is contrary to the Constitution of the United States in that it makes no provision for due and proper notice to payees and senders of the money orders involved and such notice had not been given (R. 16).

The Court of Common Pleas of Dauphin County then directed (R. 19-21) that notice be published, and pursuant to the court's order a notice was posted in the office of the prothonotary of the court and published once in newspapers of general circulation in Dauphin

County, Pennsylvania; Philadelphia, Pennsylvania; and Pittsburgh, Pennsylvania. The notice was addressed to "all persons whatsoever claiming an interest in the personal property herein referred to" (R. 19), referred to the petition for escheat on file, and added (R. 20):

> "The names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary.
>
> "The property sought to be escheated consists of amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders . . ."

The parties entered into and filed a stipulation of facts (R. 22-50). It was stipulated, among other things, that The Western Union Telegraph Company is a corporation organized and existing under the laws of New York, with its principal place of business at 60 Hudson Street, New York, New York; that it is authorized to do business in Pennsylvania and the other states in the United States, the District of Columbia and foreign countries; and that as part of its business it conducts in these jurisdictions a telegraphic money order service, subject to rules and regulations embodied in tariff provisions filed with and approved by the federal and state regulatory commissions having jurisdiction over telegraphic communications services (R. 91-97).

The procedure observed in the handling of the money order transactions was as follows (R. 27-29): The sender filled out a money order application form at the telegraph company's office of origin, paid the principal and tolls and was given a receipt for the moneys. A telegraph message was then transmitted to appellant's office located nearest to the designated payee, directing that office to pay the principal amount of the money order to the payee in the form of a negotiable money order draft. Upon receipt of the message the office of destination prepared the money order draft and a notice to the payee. The payee, after being notified and appearing at the office, was given this draft. The payee then endorsed the draft, handed it back and received cash in the amount specified, or if he preferred he took the draft with him to make such use thereof as he saw fit, in which event he was required to sign a receipt for the draft. If the payee could not be located or if after being notified he failed to call for the draft within 72 hours, the office of destination transmitted a message to the office of origin advising the latter of the reasons for nonpayment. The office of origin then notified the sender, and when the sender called at the office he received a draft which he either endorsed and cashed immediately at the office or, if he preferred, carried away with him.

The moneys received from the sender were intermingled with other funds of appellant and were used to meet various operating requirements; any excess of such funds above operating needs was transferred to appellant's account at one of its thirteen fiscal and subfiscal agencies, none of which was located within Penn-

sylvania; and all money order drafts were drawn on one of these thirteen agencies (R. 29-31).

The stipulated facts also include (R. 48, 89-91) a compilation of the amounts of money order transactions involved in this case, separately classified to show intrastate transactions which originated in Pennsylvania and were to be consummated in Pennsylvania, interstate transactions which originated in Pennsylvania and were to be consummated outside Pennsylvania, and, as to the latter, those transactions the amounts of which had been paid to the State of New York and those which had been reported but the amounts of which had not been paid to the State of New York under its Abandoned Property Law.

Appellant succeeded in the vast majority of its money order transactions in effecting delivery of drafts to the designated payee or to the sender if the payee could not be found (R. 47). All of the money order transactions here involved therefore fall into one of two classes, namely, a vast majority as to which drafts have been issued and a small number as to which no drafts have been issued.

After a hearing the Court of Common Pleas filed an opinion and decree directing that a judgment of escheat be entered (R. 51-75; App. A, 21-41). Appellant filed exceptions to the court's findings of fact, conclusions of law, and decree (R. 76-80). After additional argument, the court filed an opinion and final decree (R. 80-88; App. A, 42-49) directing that "judgment of escheat be entered in favor of the escheator and against the Western Union Telegraph Company in the sum of $39,857.74" (R. 88; App. A, 49). This sum covered the amounts of

both intrastate and interstate transaction originating in Pennsylvania, less the amounts of items which had already been paid to New York State under its Abandoned Property Law (R. 56, 75, 85-86; App. A, 25, 40, 46-47).

From this decree the appellant appealed to the Supreme Court of Pennsylvania. The questions presented on the appeal to that court were the same as those raised in the pleadings and before the lower court. These questions were raised by the brief and argument of the appellant, which is the sole method of doing so, since there is no provision in the law or practice of Pennsylvania requiring or permitting the filing of exceptions or assignments of error upon such an appeal. The pleadings were part of the record before the state Supreme Court.

The Supreme Court of Pennsylvania specifically decided against appellant on all of the issues now presented to this Court on appeal, stating (R. 154; App. A, 51): "The Western Union contests the lower court's findings on three bases: (1) the Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process."

In rejecting the appellant's contentions the Pennsylvania Supreme Court applied and enforced to the appellant's disadvantage a state statute which the appellant had, in its answer and at all subsequent stages, insisted was, if so applied and enforced, repugnant to the Fourteenth Amendment. Cf. *Dahnke-Walker Milling Co. v. Bondurant,* 257 U. S. 282, 290.

E. Substantiality of the Questions Involved.

The questions presented on this appeal have never been passed upon by this Court. With the rapid increase in the number of states enacting abandoned property laws affecting various types of intangible property,* the questions are of great public importance, particularly to corporations and other business entities conducting operations in more than one state.

1. Since no senders or payees of the money orders nor any holders of the negotiable drafts here involved, are shown to have been residents of Pennsylvania, the first question that we have set forth above is like that left open in *Connecticut Mutual Life Insurance Co. v. Moore,* 333 U.S. 541. There this Court upheld the power of the State of New York to escheat the proceeds of life insurance policies issued by foreign insurance corporations, but, at p. 549, restricted its decision to the situation "where the policies were issued for delivery in New York upon the lives of persons then resident in New York . . . We do not pass upon the validity in instances where insured persons, after delivery, ceased to be residents of New York or where the beneficiary is not a resident of New York at maturity of the policy. As interests of other possible parties not represented here may be affected by our conclusions and as no specific instances of those types appear in the record, we reserve any conclusion as to New York's power in such situations." The only other escheat case decided by this Court since that decision is *Standard Oil Co. v. New Jersey,* 341 U.S. 428, where the escheat was by the domicil-

* These statutes are listed in Appendix C hereof.

iary state and where the question reserved in the *Moore* case was not involved.

In *State of New Jersey v. Western Union Telegraph Co.*, 17 N. J. 149, 110 A.2d 115 (1954), the court discussed (17 N. J. at pp. 158 *et seq.*) a contention of the present appellant that unrefunded telegraphic money orders arising from the business carried on in New Jersey had "no situs in New Jersey under the United States Supreme Court tests of situs as the determinant of state power to escheat intangible personal property within its reach," adding that "uncertainty how the federal Supreme Court would resolve it from the facts which appear makes some comment appropriate." The question which the New Jersey court did not find it necessary to decide is squarely presented here.

The Pennsylvania statute, the constitutionality of which is involved here, is not a mere custodial statute. It is an escheat statute and the decree below purports to vest title to the moneys involved exclusively in Pennsylvania. The power to take property by escheat, unlike the power to tax, necessarily can belong only to a single state. Appellant contends that, if any state has the power to escheat the moneys here involved, it is New York, the state of domicile of the only party to the transactions involved whose domicile is in evidence. Appellant is a corporation of the State of New York with its principal place of business located there and that state, although not a party to this proceeding, is claiming under its Abandoned Property Law (McKinney's Consolidated Laws of New York, Abandoned Property Law, § 1309) a substantial portion of the moneys affected by the decree below and may claim all of them (R. 46-47).

Substantiality of Questions Involved.

In addition, we submit that each of the states where negotiable drafts were delivered to payees has a more significant contact with the transactions than the Commonwealth of Pennsylvania, and on the reasoning of the Pennsylvania courts could take the same amounts as are taken in the case at bar. In the majority of transactions involved in this proceeding, the appellant issued negotiable drafts (R. 47). These drafts were drawn on banks outside Pennsylvania, were delivered to payees both outside and inside Pennsylvania, and were negotiable anywhere (R. 119, 137, 141). These payees as creditors of the appellant had and, so far as the evidence shows, still have in their possession personal property as defined in Section 27 of the Act of 1889, as amended (27 Purdon's Statutes § 111), that is, "negotiable instruments, . . . instruments of indebtedness not under seal," or "choses in action." In this proceeding no attempt has been made to declare an escheat as to these instruments or choses in action, no doubt for the reason that these drafts were delivered to the payees not only in Pennsylvania but in every state of the Union and in foreign countries. Even as to payees who received drafts at offices of the appellant in Pennsylvania there is no showing and there can be no basis for presuming that they were residents of Pennsylvania at the time of receipt. As to these instruments, there is certainly no property subject to the control of the Commonwealth.

The only other category of transactions involved in this case is that in which a negotiable draft was not delivered to the payee. In these instances Western Union either made a refund to the sender by delivering to him a negotiable draft which the sender never cashed (R. 117), or Western Union was unable to locate the

sender in order to make a refund, in which case the sender would have as evidence of Western Union's debt to him the receipt which he was given at the time of sending the money order (R. 135). In these instances, therefore, there is still outstanding, so far as the evidence shows, an instrument or chose in action representing the debt or claim within the meaning of the Act. As in the case of payees, there is no evidence to show and there can be no presumption that these senders were residents of Pennsylvania at the times they entered the offices of the appellant to send money order messages. These instruments which were delivered to the senders, therefore, are not within the control of the Commonwealth of Pennsylvania.

The Supreme Court of Pennsylvania reasoned that the amounts claimed in the petition were "within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the Courts of the Commonwealth. Personal service of the petition on offices of the Western Union within the confines of the Commonwealth constituted a seizure of the *res*, which is the subject of the escheat." (R. 156; App. A, 54) The Court then discussed *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U. S. 541, and *Standard Oil Co. v. New Jersey*, 341 U. S. 428, as sustaining this conclusion. But the very question now under discussion was left open in the *Connecticut Mutual* case, namely, whether a state has the power to escheat where the transactions involved were between nonresidents of the state and a foreign corporation. And the *Standard Oil* case has no applicability, because the facts here are the reverse of the facts in that case. Here the appellant is not a domestic corporation, as in the *Standard Oil* case, but

is a foreign corporation. The choses in action or in struments representing the debts or demands are not in the custody or possession of the appellant, but if anywhere they are in the custody or possession of the senders or payees of money orders or of holders by endorsement or assignment. No sender, payee or other holder has been shown to be or to have been at any time a resident of Pennsylvania.

The question as to a state's power of escheat involving nonresidents and a foreign corporation has never been decided by this Court, and until the decisions of the Pennsylvania courts in this case has never been decided by any court. The appellant contends that Pennsylvania does not have this power and that the Pennsylvania Escheat Act by causing an escheat of the amounts involved here has deprived the appellant of property without due process of law.

2. Appellant's second question is whether there is jurisdiction to cause escheat in this case though collection from appellant by other states and third persons of the same amounts which are sought in the petition for escheat cannot be barred.

The petition for escheat is directed solely to the money which was paid by senders but as to which appellant was unable either to make payment in money to the persons to whom the senders had instructed that payment be made or to refund the money to the senders. Section 27 of the Pennsylvania Escheat Act (27 Purdon's Statutes § 111), however, defines the terms real and personal property as used in the Act to "mean and include all real property and all interests therein, whether legal or equitable, and moneys, negotiable instruments, instruments of indebtedness under seal, instruments of indebt-

edness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible, or intangible, and all interests therein, whether legal or equitable." The Commonwealth of Pennsylvania in its petition for escheat did not designate anything other than the specific moneys paid by senders. The decree of the Supreme Court of Pennsylvania directs that a judgment of escheat be entered, not for such specific moneys, but for an amount equal to the moneys paid by senders. Both the petition and the decree, therefore, are limited solely to money. Consequently, the decree does not protect the appellant from possible future claims, since as a final judgment it precludes only another escheat proceeding by the Commonwealth of Pennsylvania for *money;* it does not escheat and cannot cut off and determine the "claims, debts, demands" of the senders, payees and other states and foreign countries. The statute, when construed to require the escheat of money covered by such claims, denies due process to the appellant contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, since it does not protect the appellant from future claims.

In answer to appellant's contention that it would be in jeopardy of escheat elsewhere than in Pennsylvania, particularly in New York, its state of domicile, the Supreme Court of Pennsylvania said that the full faith and credit clause of the Constitution gives it protection, citing *Standard Oil Co. v. New Jersey,* 341 U. S. 428. But as we have shown, the *Standard Oil* case is not in point since the corporation there was a domestic, not a foreign corporation, as here.

Substantiality of Questions Involved.

We have here, therefore, a substantial question. Appellant's fears of multiple escheat are not unfounded. We have already adverted to the claims of the State of New York under its Abandoned Property Law. A claim for similar monies was presented to appellant by Massachusetts under its abandoned property law, Massachusetts General Laws, Chap. 200A (R. 44-45). The ruling favorable to the defendant in *State of New Jersey v. Western Union Telegraph Co.*, 17 N. J. 149, 110 A. 2d 115 (1954), *did not settle the question in that state.* The statute there involved purported to cause the escheat of funds unclaimed for fourteen years; the court held that the state's claim to escheat was barred by the New Jersey six-year statute of limitations. But under another statute (N.J. Rev. Stat., Title 2A: 37-29 *et seq.*), the state may seek to cause the escheat of funds which have been unclaimed for five years, so that the six-year statute of limitations would not be a bar.

As set forth in the stipulation of facts (R.44), the states of Washington in 1955 and Arizona in 1956 enacted modified versions of the Uniform Disposition of Abandoned Property Act drafted by the National Conference of Commissioners on Uniform Laws in 1954. Section 9, the "omnibus" section of the act, applies to: "All tangible personal property, not otherwise covered by this act, * * *." Since this case was commenced, modified versions of the act, all containing the substance of Section 9 thereof, have been acted in California (1959), Kentucky (1960), New Mexico (1959), Oregon (1957), Utah (1957) and Virginia (1960). Under most of these statutes the period of dormancy, the date for filing the report and the date for paying the monies to the state are the same. All provide penalties for non-compliance,

the only difference being in the severity thereof. Some of the monies involved in this case may also be subject to seizure under the abandoned property laws of Arkansas, Louisiana, Montana, North Carolina and Wyoming. For the convenience of the Court, attached hereto as Appendix C is a tabulation of the pertinent statutes of all the states referred to herein other than Pennsylvania.

3. Our third question is whether the notice by publication in this case pursuant to the Pennsylvania Escheat Act meets the requirements of due process. We have already pointed out that the petition for escheat asked solely for a money judgment equal to the amounts received by appellant in the money order transactions involved. There was, therefore, no seizure by the Commonwealth of Pennsylvania of any property defined in the Pennsylvania Escheat Act, and appellant contends that, since there was no seizure, notice by publication was not sufficient. Appellant further contends that the notice was invalid because the names and last known addresses of senders and payees, which were a part of the record in this case, were not set forth in the notice which was published and because there was no attempt to notify these senders and payees by mail.

The Supreme Court of Pennsylvania relied on *Security Savings Bank v. State of California,* 263 U. S. 282, to sustain the validity of the notice. There, however, the defendant was a bank which was a California corporation and had its only place of business in California. The petition for escheat was directed against deposits that were actually in the bank at its place of business. Since there was a seizure of deposits, publi-

cation by notice was held good as to depositors, the Court stating (at p. 287):

> "[T]he essentials of jurisdiction over the deposits are that there be *seizure of the res at the commencement of the suit;* and reasonable notice and opportunity to be heard." (Italics ours.)

There was no such seizure here.

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, the Court held that notice by publication which did not set forth the last known names and addresses of claimants, where those names and addresses were of record, did not meet the requirements of due process under the Fourteenth Amendment. In our case, as in the *Mullane* case, the last known names and addresses of certain of the claimants are of record (R. 20, 101). These names and addresses were not included in the published notice, and these claimants were not notified by mail.

Appellant also contends that the notice, describing the property sought to be escheated as "amounts refundable to senders," was not sufficient to apprise payees and holders of the outstanding negotiable drafts that their rights and appellant's obligations to them were also subject to escheat in the proceeding in which the notice was given. Furthermore, payees to whom money order drafts were issued outside Pennsylvania and who may never have been in that state at any time in their lives certainly should not be chargeable with knowledge of and put on notice by a Pennsylvania statute which had not even been enacted at the time when they received the drafts. Appellant contends, therefore, that the statutory notice was inadequate to afford due process under the Fourteenth Amendment.

CONCLUSION

For the reasons stated, appellant respectfully submits that the questions presented in this appeal are so substantial as to require plenary consideration, with brief on the merits and oral argument, for their resolution.

Respectfully submitted,

JOHN G. BUCHANAN
JOHN G. BUCHANAN, JR.
REX ROWLAND
1800 Oliver Building
Pittsburgh 22, Pennsylvania
JOHN H. WATERS
60 Hudson Street
New York 13, New York

Attorneys for Appellant

BUCHANAN, INGERSOLL,
RODEWALD, KYLE &
BUERGER
Of Counsel

APPENDIX A

Opinion of the Court of Common Pleas of Dauphin County

Filed December 15, 1958.

BY THE COURT:

This is an escheat proceeding. The matter is before us on the petition of the escheator who was appointed by the Secretary of Revenue. The respondent has filed an answer, wherein it is denied that the property mentioned in the petition is escheatable.

The petitioner seeks to escheat the moneys which were received at its offices and places of business in Pennsylvania for transmittal by telegraphic communication to respondent's places of business designated by the senders for payment to payees. It is averred in the petition that the respondent by money orders directed its paying offices at the points of destination to make payment to the payees named by the senders. The petition avers that the respondent agreed that if payment could not be effected within seventy-two hours after the receipt of these moneys at its paying offices, refund of the moneys deposited for the money orders would be made to the senders by the respondent; and that these moneys deposited have been unpaid and unclaimed for more than seven years.

The respondent contends that these moneys deposited in Pennsylvania are not escheatable because the defendant is a New York corporation and that there may be liability for escheat in that State and other States. It is contended also that the escheat of these moneys would be in violation of due process of law because the respondent would not be protected against multiple liability in other States to which these money orders were sent. It is contended that the escheat of

these moneys would be unconstitutional, as impairing the obligation of contracts, and that there is a violation of due process because the notice that was given of the hearing in this matter was inadequate.

This matter came on for hearing on May 19, 1958, in Court Room No. 4, pursuant to an order of the Court fixing the hearing for that date. The escheator and the respondent appeared at that hearing by counsel. Depositions were taken. These depositions were supplemented by stipulations which were put into the record by agreement of both parties. These stipulations we believe contain those facts that are essential to the disposition of this case, and we adopt the stipulations as our factual findings in this matter. And since there is no dispute in the testimony taken at the hearing, we accept also the depositions as our findings in this case. While we accept all of this testimony as our factual findings, we herein state the facts in this case which we feel are of particular significance and accordingly make the following

Opinion

FINDINGS OF FACT

1. The respondent is a New York corporation.

2. Moneys were deposited by the senders at offices of the respondent in Pennsylvania.

3. There were thousands of transactions.

4. These transactions have been referred to as money orders.

5. Each sender deposited moneys with the understanding that the respondent would transmit a tele-

graphic/communication to another of its offices designated as the paying office where the amount deposited, less charges, would be paid to a designated payee.

6. Prior to December 31, 1946, a total of $6,139.68 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.

7. Prior to December 31, 1946, a total of $615.81 (Commonwealth's Exhibit No. 4) was deposited with Postal Telegraph, Inc., to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.

8. Payments were to be made to payees at the destinations specified by senders.

9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to $6,755.49, all of which is unclaimed.

10. Prior to December 31, 1946 there was deposited with The Western Union Telegraph Company for transmission by telegraphic communication to destinations outside of Pennsylvania the sum of $31,547.97 (Commonwealth's Exhibit No. 4), which sum was to be paid to the payees named in the money orders at the respondent's offices of destination, all of which is unclaimed.

11. Prior to December 31, 1946, there was deposited with Postal Telegraph, Inc., the sum of $2,305.85 (Commonwealth's Exhibit No. 4) to be forwarded by money order to destinations outside of the State of Pennsylvania, all of which is unclaimed.

12. The total sums deposited prior to December 31, 1946 with the two companies by senders of money orders to be paid at destinations outside of the State amounted to $33,853.82, all of which is unclaimed.

13. From January 1, 1947 to December 31, 1948, money orders totalling $1,349.80 (Commonwealth's Exhibit No. 4) were purchased from respondent by senders for delivery to payees at destinations in Pennsylvania, and $4,280.73 was deposited by senders of money orders in Pennsylvania for delivery to payees outside of the State of Pennsylvania, all of which is unclaimed.

14. The respondent, the said Western Union Telegraph Company, a New York corporation, merged with Postal Telegraph, Inc., a Delaware corporation, on or about October 7, 1943.

15. The New York corporation, respondent herein, was the surviving corporation and assumed all the obligations of the merged corporation, Postal Telegraph, Inc., and its subsidiaries.

16 At the respondent's offices in Pennsylvania, the cash received on account of the purchase of money orders was co-mingled with daily receipts.

17. The surplus of these daily receipts in Pennsylvania over expenditures was deposited in local banks, and from time to time excess funds remitted to the respondent's out-of-state depositaries. Money orders were drawn on these depositaries.

18. It is not shown, however, that funds for the payment of money orders were earmarked and set aside from the general funds of the respondent on deposit anywhere.

19. The respondent contracted with persons purchasing money orders that if payment was not made to the payees at the point of destination within seventy-two hours, the sums deposited by the senders would be refunded.

20. Such refunds were to be made at the point of origin, i. e., the point where the senders purchased the money orders in Pennsylvania.

21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is $46,239.84 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed.

DISCUSSION

It has been held with respect to an escheator's petition that it is "the duty of a petitioner for escheat 'clearly to aver a case within some act or acts of assembly' "; Escheat of $92,800, 361 Pa. 51, 57 (1949); Commonwealth ex rel. Reno et al. v. Pennsylvania Co., Etc., 339 Pa. 513, 516 (1940). And the procedure provided for in the statute invoked must be pursued: Rosenfeld's Appeal, 337 Pa. 183, 187 (1940).

The petition is brought under the Act of May 2, 1889, P. L. 66, as last amended by the Act of July 29, 1953, P. L. 986. Petitioner by his petition has proceeded in accordance with the provisions of this statute. As entitling the State to escheat the moneys held by the respondent, the escheator invoked § 3 of the Act of 1889, as amended by the Act of 1953, 27 P. S. 333, defining by the amendment escheatable property, inter alia, as follows:

"Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same."

Are the moneys on deposit with the respondent in this State represented by unpaid money orders which have been unclaimed for more than seven years escheatable in Pennsylvania? The deposits were made in numerous localities throughout the Commonwealth, the respondent having contracted to refund the moneys in this State to the senders if payment was not made within seventy-two hours to the payees named in the money orders.

"A legislative provision for escheat is a valid exercise of the police power of the State: ****." The State has jurisdiction "over intangibles and **** power to subject them to escheat even as against possible nonresident owners": Philadelphia Electric Company Case, 352 Pa., 457, 463, 464 (1945).

In Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951), it was held that regardless of theories as to their situs, stock certificates and undelivered dividends, whose owners have been unknown or have made no claim thereon for fourteen successive years, may be escheated by the domiciliary State of the corporation (New Jersey), even as against holders of stock and dividends whose last known addresses were chiefly in other States and foreign countries.

These two cases last cited stand for the proposition that the State has power to escheat intangible property held by a corporation in the State of domicile, and emphasize the power of the State to seize ownerless property even as against possible nonresident owners. There is involved in the instant case, however, not the question of the State's jurisdiction over unclaimed property held by a corporation domiciled here where possible nonresidents may be affected. We are concerned in this case with the question of jurisdiction of this State over property held in the State by a corporation domiciled in another State. This proceeding involves (a) money held in Pennsylvania by the respondent, a New York corporation; (b) the depositors of money (the senders of money orders) who have made no claim for the refund of their deposits; and (c) other possible unknown claimants—payees or others who may have any interest in the uncashed money orders. Some of the payees named in the money orders were in Pennsylvania, while others were outside of this State. All the senders were in Pennsylvania.

The res involved here is the debt or demand of the State because of moneys deposited within this Commonwealth to pay money orders which have been unpaid and unclaimed. Funds are on deposit here in local banks.

In Security Savings Bank v. State of California, 263 U.S. 282 (1923), the Supreme Court, in dealing with the question of the right of the State of California to escheat unclaimed deposits in savings banks, stated at page 285:

> "The unclaimed deposits are debts due by a California corporation with its place of business there. * * * The debts arose out of contracts made and to be performed there. * * * Thus the deposits are clearly intangible property within the State. Over this intangible property the State has the same dominion that it has over tangible property."

We are here dealing with the seizure and forfeiture in Pennsylvania of intangible property held by a New York corporation within the dominion of this State, whereas in the Security Savings Bank case, the Philadelphia Electric case, and the Standard Oil case, the courts in each instance were considering the question of the escheat of intangible property held by a corporation in its State of domicile.

We think the language of the Supreme Court in the Security Savings Bank case throws considerable light on the nature of an escheat proceeding and we quote in part therefrom at pages 286-287-288:

> "The proceeding is not one in personam — at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles gar-

nishment. In substance it is like proceedings in escheat, * * *; for confiscation, * * *; for forfeiture, * * *; for condemnation, * * *; for registry of titles, * * *; and libels for possession brought by the Alien Property Custodian, * * *. These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard. * * * There is a seizure or it equivalent. * * * Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants.

"Seizure of the deposit is effected by the personal service made upon the bank. * * * Thereby the res is subjected to the jurisdiction of the court. * * * The fact that the claim of the State to the deposit may be defeated by the appearance of the debtor or other claimant does not, as argued, prove that the deposit was not seized."

It seems to us that the petition for escheat, when served upon the respondent, must have had the same effect as the suit instituted by the Attorney General in the State of California in the Security Savings Bank case. The escheat petition is clearly directed against the funds of the defendant located within this Commonwealth. We are aware that it has been held that intan-

gible property held by a corporaton has its situs in the State of incorporation for purposes of taxation: Commonwealth v. Schuylkill Trust Company, 327 Pa. 127 (1937). We think the important factor in the instant case is not situs but rather the dominion of the res. The property here to be escheated—respondent's deposits in Pennsylvania banks—"is a part of the mass of property within the state whose transfer and devolution is subject to state control": Standard Oil Co. v. New Jersey, 341 U. S., supra, at 438, 441.

Escheat proceedings involve the forfeiture to the State of particular and identified ownerless property. The many statutes on the subject define and specify the particular property that is escheatable. And implicit in the decisional law on the subject we believe is the requirement that the escheator must deal with a defined res. Escheat of $92,800, 361 Pa., supra; Philadelphia Electric Company case, 352 Pa., supra; Pennsylvania Power & Light Company case, 352 Pa. 466 (1945); Commonwealth ex rel. Reno, et al. v. Pennsylvania Co., etc., 339 Pa., supra; Rosenfeld's Appeal, 337 Pa. supra; In Re Escheat of Moneys in Custody of United States Treasury, 322 Pa. 481 (1936); Germantown Trust Co. v. Powell, 285 Pa. 71 (1919); Commonwealth v. Dollar Savings Bank, 259 Pa. 138 (1917); Alton's Estate, 220 Pa. 258 (1908); Cunnius v. Reading School District, 206 Pa. 469 (1903). These are but a few of the cases dealing with the subject of escheat, but they are sufficient to show that proceedings are had against particularly identified property, frequently moneys, deposits, securities or other liquid funds.

While this case presents questions differing in some aspects from the problems decided by this Court in

Frank B. Murdoch and Leo Weinrott, Escheators of the Commonwealth of Pennsylvania v. Pennsylvania Railroad Company, 257 Commonwealth Docket 1954 (not yet reported), Judge Kreider's exhaustive opinion in that case interprets the Act of 1889, as amended by the Act of 1953, and should be read by all persons interested in the subject of escheat as being a comprehensive consideration not only of the application of the Act, as amended, but constitutional aspects of the statute as well.

Not only is the res involved herein within the domain of Pennsylvania, but the circumstances under which that res came into existence are of particular importance. As a matter of contract, when the deposits were made, money orders that were not cashed within seventy-two hours by the payees were to be refunded to the depositors. This was an express contract which called for its execution within this State. The name and address of each sender was noted on the application form at the point where the money was sent. There were thousands of transactions involving sums in various amounts. The transactions concerning the deposits and the agreements for refund all occurred within this State. Pennsylvania's contact with these many transactions and its dominion over the funds here on deposit should entitle this State to escheat the unclaimed sums that were deposited for money orders.

Our attention has been called to a decision by the Supreme Court of the United States—Connecticut Mutual Life Insurance Co., et al. v. Moore, 333 U.S. 541 (1948). That case involved an interpretation of the New York Abandoned Property Law, which, inter alia, pro-

vided that moneys held or owing by any life insurance corporation, which shall remain unclaimed for seven years by the persons entitled thereto, shall be deemed abandoned property. In a declaratory judgment proceeding, nine insurance companies, incorporated in States other than New York, sought in the Supreme Court of New York a declaration of the invalidity of the Abandoned Property Law as applied to moneys held or owed by these insurance companies. The New York Courts held such moneys to be subject to escheat. The Supreme Court of the United States, in affirming the judgment of the Court of Appeals of New York, held that New York had the power to take over these abandoned moneys in the hands of the foreign insurance companies. The majority of the Court was of the view that the State of New York had such contacts with the transactions involving the insurance policies in question as to entitle the State to escheat the proceeds of the policies which remained unclaimed. There were three dissents, Justices Frankfurter, Jackson and Douglas, which were occasioned in some measure at least because of the dissatisfaction of the dissenting Justices with the procedure by which the questions were brought before the Court. These dissenters felt that the general declaration of the validity of the law, and that accordingly New York had power to take over the abandoned moneys in the hands of foreign corporations, was not a sufficient answer to many of the problems that would arise under the New York law, and that, therefore, there should be no adjudication in the matter until cases were presented containing justiciable issues in a more concrete form.

We are inclined to the view that there is an issue involved here that is sufficiently defined as to satisfy the

requirements of the dissenting Justices as outlined in the Connecticut Mutual Life Insurance case. And we believe also that the Connecticut Mutual case clearly establishes Pennsylvania's right to escheat in this case the funds within its jurisdiction.

It should be observed that Mr. Justice Frankfurter, in the Connecticut Mutual case, stated at page 554: "For all we know there are no funds in New York to which that State could lay claim even within the circumscribed affirmance by this Court of the New York judgment." The deposit of funds within the jurisdiction of the State differentiates the instant case from the abstract declaration of law sought and obtained by the insurance companies in the Connecticut Mutual case. The funds deposited here, even though in local banks for current purposes, give this State an important contact with the ownerless property involved herein.

In our judgment, when ownerless property held by a foreign corporation is within the dominion of this State, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has had extensive contact with the transactions by which the res was created. The rationale of the decisions herein cited points to this as being the correct conclusion.

There is no constitutional objection to the escheat of the moneys held by the respondent. Most of the questions raised by the respondent as constitutional objections have been decided against the respondent in Standard Oil Co. v. New Jersey, 341 U.S., Supra. The respondent has argued that the statutory escheat of

these moneys takes its property without due process of law because it is not protected from claims by New York and other States.[1] If the respondent's debt, represented by these unclaimed deposits, is taken by a valid judgment in this State, the same debts or demands against respondent cannot be taken by another State. In the Standard Oil Company case, at page 443, the Supreme Court said:

> "* * * The Full Faith and Credit Clause bars any such double escheat. Cf. Baltimore & Ohio R. Co. v. Hostetter, 240 U. S. 620, 624, and cases cited, particularly Harris v. Balk, 198 U. S. 215, 226."

And continuing, the Court stated:

> "* * * The claim of no other state to this property is before us and, of course, determination of any right of a claimant state against New Jersey for the property escheated by New Jersey must await presentation here."

It seems to us that this case affords a complete answer to the contention that New York might escheat these moneys. The claim of New York is not before us, and surely this escheat proceeding should not abate, because of some claim that may or may not in the future be presented. When and if proceedings in this matter are brought within the jurisdiction of a higher tribunal, the claims of other States may be duly adjudicated therein.

In connection with due process, the respondent complains that the notice to any claimants was insufficient.

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1. Although respondent asserted ownership of the funds in question in its answer, that position was abandoned in its brief and oral argument.

Section 8 of the Act of 1889, as amended, 27 P. S. 43, as to notice, provides that—

> "* * * and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof."

The statute does not spell out the extent of the notice required, and in conformity with this provision in the statute the Court ordered publication one time in a newspaper of general circulation in Philadelphia, Pittsburgh and Dauphin County, all publications to be at least twenty days prior to the date fixed for hearing. We also directed that notice be published in the office of the Prothonotary of this Court.

The petition for hearing recited that—

> "Notice of the filing of the Petition for Escheat and of the time and place fixed for hearing thereon, cannot be served upon the persons entitled to payment of the sums set forth in the Petition because the whereabouts of the senders or other persons entitled thereto have been unknown for more than seven years and until the present time."

The order which the Court made with respect to notice reads as follows:

> "* * * it is ORDERED that a hearing upon the Petition for Escheat and Answer thereto filed in the above entitled matter be fixed for Monday, the 19 day of May, 1958, at 10 o'clock a.m., in the Court of Common Pleas of Dauphin County in the Court House, Room 4, Harrisburg, Pennsylvania, and that

> notice of the filing of the Petition for Escheat, and of the time and place fixed for hearing thereon, be served upon all persons claiming an interest in the property sought to be escheated by posting in the office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in County of Dauphin, one in the City of Philadelphia, and one in the City of Pittsburgh, such notice to be not less than twenty (20) days before the time fixed for hearing."

We call attention to the Security Savings Bank case, as well as the Standard Oil case, where notice by publication was given. And in Anderson National Bank, et al. v. Luckett, et al., 321 U. S. 233 (1944) at 244, the Supreme Court of the United States recognized as valid a statutory notice in an escheat proceeding which consisted of "the posting of a notice on the door of the court house in a Kentucky county"; and at page 243 the Court made this significant comment:

> "The statute itself is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts will be deemed presumptively abandoned, and their surrender to the state compelled."

We must bear in mind also that by §22 of the Act of 1889, as amended, 27 P. S. 91, there is granted to every person without actual notice of the escheat proceedings, the right, at any time within three years after the adjudication, to traverse the adjudication by writing filed in the court which entered the adjudication and

the issue thus raised must be tried in that court. In Anderson National Bank, et al. v. Luckett, et al., 321 U. S., supra, involving the escheat of bank deposits, the Court said at page 245:

> "* * * The statutory procedure, so far as it affects depositors, is in the nature of a proceeding in rem, in the course of which property, against which a claim is asserted, is seized or sequestered, and held subject to the appearance and presentation of claims by all those who assert an adverse interest in it. In all such proceedings the seizure of the property is in itself a form of notice of the claim asserted, to those who may claim an interest in the property. See Corn Exchange Bank v. Coler, 280 U.S. 218, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure."

And in Mullane v. Central Hanover Bank & Trust Co., Trustee, et al., 339 U. S. 306 (1950), in a proceeding involving trusts, with numerous parties as possible beneficiaries whose names and interests were not known to the Trustee, the Supreme Court said at page 317:

> "This Court has not hesitated to approve of resort to publication as a customary substitute * * * where it is not reasonably possible or practicable to give more adequate warning."

And at page 318, the Court continued:

> "Accordingly we overrule appellant's constitutional objections to published notice insofar as they are urged on behalf of any beneficiaries whose interests or addresses are unknown to the trustee."

See also State v. American-Hawaiian S. S. Co., 101 Atlantic (2d) 598 (New Jersey—1953), holding, inter alia, that in the absence of requisite statutory requirements to satisfy procedural due process concerning notice, the Court under its inherent power could order such notice as would fulfill those requirements.

It is our conclusion, then, that there was no violation of due process in the notice that was ordered by the Court. Publication was the only practicable method by which service could be obtained as to persons who had any possible interest in these unpaid money orders. As a matter of fact, it was the only method available.

Finally, the defendant asserts that the escheat of these moneys impairs the contract rights of the owners, and therefore violates Article I, §10, of the Federal Constitution which provides—"No State shall * * * pass any * * * Law impairing the Obligation of Contracts, * * *." As we have stated, escheat statutes are enacted pursuant to the police power of the State: Cunnius v. Reading School District, 198 U. S. 458, 469 (1905). Again, we turn to the Standard Oil case as disposing of this contention. The Supreme Court commented on this point as follows at page 436:

> "* * * Normally the obligor or holder and the obligee or owner of abandoned property would, as here, have no contractual arrangement between themselves for its disposition in case of the owner's failure to make claim. As the disposition of abandoned property is a function of the state, no implied contract arises between obligor and obligee to determine the disposition of such property. Consequently, there is no impairment of contract by New Jersey's

statute, enacted subsequent to the creation of the obligations here under examination, but only the exercise of a regulatory power over abandoned property."

We are not persuaded that any significance should be attached to the method by which the respondent handled the sums deposited with it. The respondent did not segregate the moneys which were deposited with it over many years. These moneys were co-mingled with other daily receipts. The surplus from these daily receipts was deposited in local banks, and from time to time excess deposits were remitted to out-of-state fiscal agents.

The parties have not seen fit to stipulate the sums of money on deposit in Pennsylvania, but that there have been funds here from time to time is shown by the stipulation, and presumably there are now funds on deposit here in connection with the extensive business carried on by the respondent in this State. Nor do we think it is significant that money orders were drawn on out-of-state depositaries for the payment of money orders. The important fact is that there are funds in Pennsylvania and these funds are subject to the dominion of this State for purposes of escheat. It would have been helpful to have had further testimony concerning the extent and location of the funds in this State. Absent such evidence, however, we must rely on the agreement of the parties that funds are here in the course of respondent's business.

Under the facts in this case, we are dealing not merely with sums deposited in Pennsylvania with the respondent, but we are concerned also with deposits

made with Postal Telegraph, Inc., the merged company. This fact further tends to establish Pennsylvania jurisdiction to escheat these moneys, since Postal went out of existence leaving in Pennsylvania debts which were incurred here to unknown claimants. These debts, as we have pointed out, created the res which is essential to any escheat proceeding. It is doubtful indeed in our minds that the assumption of Postal's liability by the respondent could be considered as the res in any escheat proceeding in New York.

There has been introduced by agreement Commonwealth's Exhibit No. 4 which contains schedules of unpaid money orders. Included in the schedules in this exhibit is Schedule "C" which relates to money orders originating outside of the State and sent to destinations in Pennsylvania. We have not considered this schedule in any way. It is not included within the averments of the petition for escheat. Although we do not decide the matter now, there is a serious doubt in our mind as to whether we have dominion over the accounts created out of the State in this manner and referred to in Schedule "C" of Commonwealth's Exhibit No. 4.

There is one item of which we should take note. It is set forth that $725.85 has already been escheated to New York and payment of that amount has been made. We take this opportunity of stating that we do not recognize New York's authority to escheat that money, but since it has been done we have no jurisdiction over this sum.

We, therefore, adjudge that the sums deposited at points in Pennsylvania for the purchase of money orders which were never paid to the payees at the points of

destination are escheatable regardless of whether those points of destination were within or without the State of Pennsylvania. In view of the foregoing, we make the following

CONCLUSION OF LAW

1. The sum of $45,513.99 now held by the respondent is escheatable in Pennsylvania.

DECREE

AND NOW, December 15, 1958, in this proceeding it is directed that judgment of escheat be entered in favor of the escheator and against the respondent in the sum of $45,513.99, unless exceptions are filed hereto within thirty (30) days.

WILLIAM H. NEELY
J.

Opinion of the Court of Common Pleas of Dauphin County

Filed July 6, 1959.

BY THE COURT:

The respondent has filed fourteen exceptions to this Court's opinion of December 15, 1958. Exceptions one through eleven relate to the nature of the money order transactions as characterized by the Court in certain Findings of Fact. Exception twelve relates to our findings as to the total amount of unpaid money orders which the Court found to be $46,239.84. The thirteenth exception is to our first Conclusion of Law that $45,513.99 is escheatable by the respondent in Pennsylvania, and the fourteenth exception is to the decree of the Court which directed judgment of escheat to be entered in this latter amount.

The respondent argues that "* * * the Court finds that senders 'deposited' money in the offices of the Respondent in Pennsylvania"; that "these sums were to be 'transmitted', 'forwarded', 'paid', or 'delivered' to payees"; and contends that "These Findings, * * * describe the money order transaction as being one consisting of the deposit of money and the transmittal or delivery of that money"; and further contends that "This is not in accord with the facts of record."

The Court in its Findings has merely described the money order transactions in the same manner as did the respondent by its own rules and regulations, its transmittal forms, its applications for money orders, and in other documents, all of which were offered by the respondent as exhibits and admitted into the record in this case. A limited reference to some of the language used in the respondent's exhibits supports the Court's

Findings with respect to the nature and character of these transactions.

These were admitted in evidence (respondent's Exhibits Nos. 2 to 8 inclusive) respondent's regulations governing its telegraphic money order service as filed with certain governmental agencies. Respondent's Exhibit No. 2 states that these regulations are " * * * instructions * * * for the information and guidance of the employees and agents of this company in the acceptance, transmission and payment of Money Transfers." This Exhibit set forth, inter alia, the charges for transfer of money. For example, it provides that "The transfer charges for a transfer of $125.00 will be 85¢ for $100.00, plus 25¢ for the additional $25.00, total $1.10."

Exhibit No. 3 refers to "Money for transfer to another point." This same Exhibit, after detailing the transfer charge for specified sums of money, sets forth an additional charge for transmitting messages. The Exhibit provides that "The word 'sender' indicates the person sending the transfer and the word 'payee' the person to whom the money is to be paid." The same Exhibit also provides that "If cash is desired the payee of a transfer, or the sender in case of a refund, will be required to sign the back of the draft." The same Exhibit contains a sample money transfer application form which says: "Amount of transfer principal expressed in words and written out in full." Such amount of transfer principal can amount to nothing more than a deposit of money as characterized by the Court in its opinion, which money was deposited for transfer to the payee at the designated destination. Exhibit No. 4 contains a similar sample money transfer form and also other

language similar to that already mentioned in other Exhibits.

Exhibit No. 5 contains the following sample form "Refund Notice":

> "Buffalo, N. Y., Sept. 4, 1925
> To Richard Brown
> 7th & Walnut Sts.
> The sum of money deposited by you on Sept. 1, 1925 for transmission by telegraph remains unpaid for reasons beyond our control. If you will call at our office at 5 South Division St., it will be refunded upon presentation of satisfactory evidence of identity."

Thus, the respondent in its own refund notice makes reference to the deposit of moneys for transmission.

Exhibit No. 6 contains a number of specimen forms, including a transmittal form for delivery of a draft or supplemental message, or both, which states: "The Money Order paid you herewith is from William J. Smith at Philadelphia Penn"—with a supplemental message. The same Exhibit contains a specimen "Caution" order which says: "We have received a telegraphic money order for you * * *." There is another form "Notice To Sender Of Undelivered Money Order" which provides: "Your money order of * * * cannot be paid * * *. The money will be refunded to you at the expiration of 72 hours unless payment is effected in the meantime."

Exhibit No. 7 contains this notation: "In the case of a foreign order the foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer"; and also contains the provision that "The

amount of the order must be written out in words in the proper place on the application form."

Exhibit No. 8 provides as follows:

"Money orders that remain unpaid at the expiration of seventy-two hours from receipt, exclusive of Sundays and holidays, shall be cancelled * * * and the originating office so notified by service message, stating the reasons for cancellation."

We have by no means exhausted the pertinent language of the numerous Exhibits. That which we have quoted is clearly sufficient to support our conclusion that the Court has properly characterized the transactions in question in the Findings of Fact which are the subject of the respondent's first eleven exceptions.

The respondent complains that some implication of a trust relationship arises in these money order transactions as described by the Court in its Findings of Fact. The Court by its Findings does not intend to make any implication as to whether the money order transactions created a trust relationship or a debtor-creditor relationship. It was not essential to the Court's disposition of this case to determine this relationship since in our view we would have reached the same result regardless of the relationship.

It was agreed in paragraph nineteen of the stipulation of facts that two items totaling $25.72 have been paid and are not therefore involved in this proceeding. Findings of Fact Nos. 6 and 9, therefore, should each be reduced in the amount of $25.72. Finding of Fact No. 6 should read:

"6. Prior to December 31, 1946, a total of $6,113.96 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed."

And Finding of Fact No. 9 should read as follows:

"9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to $6,729.77, all of which is unclaimed."

Both parties agree that unpaid money orders between January 1, 1947 and December 31, 1948 in Schedules A and B on the first page of Commonwealth's Exhibit No. 4, totaling $5,630.53, should be eliminated from this case. This is pursuant to the stipulation mentioned on page eight of the notes of testimony. And both sides have agreed that the sums referred to in Finding of Fact No. 13 in that total amount should be eliminated from this case.

There should then be eliminated from further consideration the item of $25.72 mentioned in Findings 6 and 9. And there should also be eliminated the sum of $5,630.53 mentioned in Finding 13. Finding of Fact 21, then, instead of being $46,239.84, should reflect the deduction of the two items above mentioned totaling $5,656.25, and that Finding then should read as follows:

"21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is $40,583.59 (Commonwealth's Exhibit No. 4), all of which sum

is held by the respondent and remains unpaid as well as unclaimed."

The Court's first Conclusion of Law should read as follows:

"1. The sum of $39,857.74 now held by the respondent is escheatable in Pennsylvania."

In answer to the respondent's fourteenth exception, we take occasion to point out that the amount for which judgment of escheat shall be entered is $39,857.74. Both parties have in their briefs and at the oral argument of respondent's exceptions stated that the Findings should be modified to the extent hereinabove set forth.[1]

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1. In its brief in support of its exceptions to Findings of Fact and Conclusions of Law, the respondent makes the following statement:

"In paragraph 19 of the Stipulation of Facts it was stipulated that two items appearing in Schedule A of Exhibit A, totaling $25.72, have been paid since the date of the compilation of the exhibit. Therefore, the total amounts stated in Findings of Fact 6 and 9 should be reduced by $25.72, so that these total amounts are, respectively, $6,113.96 and $6,729.77.

"At the time of the hearing in this case it was stipulated that money orders for the period January 1, 1947, to December 31, 1948, (see page 8 of the notes of testimony), were eliminated from the case, for the reason that since Petitioner had not filed with the Prothonotary the exhibits listing these transactions there could be no notice as to them. The amounts set forth in Finding of Fact 13, therefore, totaling $5,630.53, should be eliminated.

"In order to reflect the above eliminations, Finding of Fact 21 should be reduced by the amount of $5,656.25, so that the amount appearing in Finding of Fact 21 should be $40,583.59 instead of $46,239.84. Like-

We have herein discussed only the matters raised in the respondent's exceptions. At the oral argument on the exceptions, respondent argued many of the points that it presented at its first argument before the Court en banc. Since these points, although reargued, were not raised by exceptions, it is not necessary to take note of them at this stage in the proceedings. However, we have reconsidered all of the respondent's rearguments and are of the view that the Court has disposed of these matters in its opinion of December 15, 1958. We find no occasion to depart from the disposition which we have already made of the respondent's contentions. All of them are fully considered in the Court's opinion of December 15th. In view of the foregoing, we herewith enter the following

Final Decree

AND NOW, July 6, 1959, respondent's exceptions Nos. 1, 2, 4, 6, 7, 8, 10, 11 and 14 are herewith overruled. Findings of Fact Nos. 6, 9, 13 and 21 (exceptions Nos. 3, 5, 9 and 12), and the Court's first Conclusion of Law (excep-

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wise, in order to reflect these eliminations in the figure in the Conclusion of Law and in the Decree at page 18 of the Court's Opinion, the figure should be $39,857.74 instead of $45,513.39." (parentheses supplied)

The petitioner in his brief contra the respondent's exceptions states:

"The respondent has correctly stated that certain items have been eliminated from this case by Stipulation of Counsel, and that the amounts set forth in the Findings of Fact should be reduced; and that, accordingly, the amount appearing in Finding of Fact No. 21 should be $40,583.59, and the amount in the Conclusion of Law and in the Decree, at page 18, should be $39,857.74."

tion No. 13) are herewith modified as herein set forth. It is directed that judgment of escheat be entered in favor of the escheator and against The Western Union Telegraph Company in the sum of $39,857.74.

(S) WILLIAM H. NEELY
J.

Opinion of the Supreme Court of Pennsylvania

Filed June 29, 1960.

MUSMANNO, J.

The Western Union Telegraph Company, which is a New York corporation, operates in Pennsylvania, as it does in all States of the Union. In the course of its business it collects money for transmission to other places by means of telegraphic money orders, that is to say, a sender deposits so much money at the sending office and the Western Union telegraphs to the office geographically closest to the address of the payee an order to pay the payee the amount specified by the payor. It sometimes occurs, however, because of the uncertainties of life, with its untoward happenings including accidents, earthquakes, fires, sudden removals, and even death, that the designated payee never gets the money telegraphed to him, in which event the sending Western Union office is so notified and it then pays the money back to the original depositor.

But unexpected happenings transpire even at the sender's end and, as a result of accident, earthquake, fire, or even death, the Western Union sending office is thus unable to return the money it had accepted for

transmission. What happens to this money after sufficient time has elapsed to warrant the assumption that the sender will never turn up to collect back his money? The Western Union Telegraph Company answers this question with the flat statement that it is entitled to the money.

If there were no declared law on the subject, some color of right would attach to the Western Union's claims because, in the absence of an established potentially-collecting owner, the possessor of property, through discovery, finding or otherwise, obviously can hold it against the world. However, there is no vacuum in the law for a situation of this kind. The Legislature of Pennsylvania has specifically provided that:

> "(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled, has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth.
>
> "(c) Whensoever any real or personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth." (Escheat Act of 1889, May 2, 1889, P.L. 66, § 3) as amended by the Act of 1953, July 29, P.L. 986, § 1 (27 P.S. § 333).

Proceeding under this statute, the Commonwealth of Pennsylvania, through its Secretary of Revenue, appointed Sidney Gottlieb, Esq., of Pittsburgh, as Escheator to collect outstanding sums such as those involved in this case. Accordingly, on December 21, 1953, Mr. Gottlieb filed in the Court of Common Pleas of Dauphin County a petition for escheat of certain sums in the hands of the Western Union Telegraph Company which for seven years had remained unclaimed by their original owners. The Western Union Telegraph Company denied the right of the Commonwealth to escheat under the circumstances, and a hearing was scheduled in the court of common pleas. Before the hearing, however, the parties agreed on a stipulation of facts which was filed April 18, 1958. After due consideration of the agreed-on facts, assisted by arguments of the contending parties, the court on December 5, 1958, found for the Commonwealth in the sum of $45,513.99, the amount in controversy. Western Union appealed.

The Western Union contests the lower Court's findings on three bases: (1) The Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in Escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process.

The respondent Western Union says in its brief that the petition for escheat is "directed solely to the money which was paid by the senders but as to which Western Union was unable either to make payment in money to the persons to whom the senders had in-

structed payment to be made or to refund the money to the sender," and then argues that "these sums of money are not in Pennsylvania." The respondent points out that it is not per se a financial institution; that it is a telegram-transmitting organization and that it did not at any time during the period covered by the petition in escheat, or at any time, have fiscal or sub-fiscal agencies in Pennsylvania.

It emphasizes that the money paid by the sender in any particular transaction was not held isolatedly from other moneys and was not earmarked as belonging to the particular person who had deposited it for transmission to another person. The money was placed in a cash drawer and there it intermingled with money collected for telegrams and with other receipts. Thus, the respondent submits, it is impossible for the Court to point its finger to any specific "money" and say that this is the money which a sender deposited and which now has been unclaimed for seven years.

This argument almost approaches a play in semantics. It would be difficult to find a more generic term than *money*. When a lender approaches a person to whom he made a loan a long time before and says to him: "I want my money back," he obviously does not ask for the specific greenbacks he put into the hands of the lendee. He will take any greenbacks, yellowbacks, coins, bank checks, or even promissory notes which, in their total value, will be the exact sum he turned over to the defaulting debtor. Thus, the Commonwealth here, in its petition for escheat, was not calling upon Western Union to search out the original coins and currency

deposited by the senders who have since vanished in the mysterious sea of Whereabouts Unknown. The Commonwealth asked for the fiscal equivalent of that money.

Western Union itself does not think of money in a specific sense. When a customer wishes to transmit a monetary sum by telegraph he fills out a Western Union form which includes such designations as "money transfers" and "message to be delivered with the money." No one assumes that by the phrase "money transfer", Western Union is expected to actually transport to the payee the coins and currency the customer places on the counter and for which he is handed a receipt.

The notice which is sent to the payee carries the sentence: "We have received a sum of money by telegraph for you." By the use of this language Western Union does not intend to suggest that the legal tender it is ready to pay over to the payee is the exchange-stained currency and travel-battered coins which came from the pocket of the sender.

The interpretation argued for by Western Union contradicts what the courts have often declared on the subject. The Supreme Court of the United States said in Connecticut Mutual Life Insurance Company v. Moore, 333 U.S. 541:

> "The statutory reference 'to any moneys held or owing' does not refer to any specific assets of an insurance company, but simply to the obligation of the companies to pay it."

In *Newhard v. Newhard*, 303 Pa. 299, 301, this Court said:

> "The word 'moneys' is a general term and may and often does include property other than currency."

The respondent also argues that the Commonwealth may not escheat "moneys" in its possession because it has issued drafts to payees and even to senders which are still outstanding, but the mere issuance of drafts does not constitute payment, since there is no agreement between the parties to that effect. *Levan v. Wilten,* 135 Pa. 61, 63; *Easton School District v. Continental Casualty Co.,* 304 Pa. 64, 71; *North Penn Iron Co. v. N.J. Bridge Co.,* 35 Pa. Superior Ct. 84, 85.

Thus, interpreting the Commonwealth's petition as seeking escheat of the unclaimed obligations held by Western Union rather than any specific moneys deposited by the senders and which Western Union no longer possesses, we inevitably come to the conclusion that the *res* of the escheat proceedings, is, contrary to the appellant's contention, within the control of the Commonwealth. It is within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the courts of the Commonwealth. Personal service of the petition on offices of the Western Union within the confines of the Commonwealth constituted a seizure of the *res,* which is the subject of the escheat.

On this subject, the Supreme Court of the United States, in *Standard Oil Co. v. New Jersey,* 341 U.S. 428, 439, said:

> "Since it is it's obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation. . .

> We see no reason to doubt that, where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can 'only arise from control or power over the persons whose relationships are the source of the obligations.' Estin v. Estin, 334 U.S. 541, 548. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible. . . . The rights of the owner of the stock and dividends comes within the reach of the court by the notice, i.e. service by publication; the rights of the appellant by personal service."

It was held in that case that the domiciliary State of the corporation. New Jersey, could escheat its stock certificates and undelivered dividends even though the addresses of some of the owners were in other states and foreign countries.

The Western Union Telegraph Company is not domiciled in Pennsylvania, but it is subject to its jurisdiction since it transacts business here in many offices, and personal service was obtained upon it in Pennsylvania. Moreover, all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania. As stated in *Connecticut Mutual Life Ins. Co. v. Moore,* 297 N.Y. 1, 9:

> "The core of the debtor obligations of the plaintiff companies was created through acts done in

> this State, and the ties thereby established between the companies and the State were without more sufficient to validate the jurisdiction here asserted by the legislature."

The Supreme Court of the United States, at 333 U.S. 541, affirmed this New York decision.

We find no error in the holding of the lower court that—

> "When ownerless property held by a foreign corporation is within the dominion of this state, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has extensive contact with the transactions by which the res was created . . ."

Then Western Union contends that it would be unjust to require it to give up the unclaimed moneys in its possession because it might be besieged later on by senders, payees, or holders in due course of outstanding drafts. This picture conjures up a fear without objective basis. The instant escheat proceedings have to do with moneys which have been vainly seeking their missing owners for at least seven years. Thus, outstanding drafts would be stale-dated and therefore not honored. In any event, stop payments could be issued against them. But, most important of all, no belated claims for outstanding moneys could overcome the finality of escheat proceedings even without personal service on interested parties. It must be emphasized that escheat proceedings are in rem and not in personam.

"The proceeding is not one in personam — at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles garnishment. In substance it is like proceedings in escheat, . . . for confiscation, . . .; for forfeiture, . . .; for condemnation, . . .; for registry of titles, . . .; and libels for possession brought by the Alien Property Custodian. . . . These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiciton over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard . . . There is a seizure or its equivalent. . . . Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors, and as strictly in rem, so far as concerns other claimants." (*Security Savings Bank v. California,* 263 U.S. 282.)

This decision puts into bold relief the irrefutable proposition that:

> "Seizure of the deposit is effected by personal service made upon the bank . . . Thereby the res is subjected to the jurisdiction of the court . . ."

Thus, the seizure of the *res* constituted constructive notice on all involved parties. In *Hollingsworth v. Bar-*

bour, 29 U.S. 466, 475, the Supreme Court affirmed the lower court's statement that "The law regards the seizure of the thing as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice."

Moreover, in the instant case, there was a posting of the notice of the escheat proceedings in the office of the Prothonotary of Dauphin County and publication of the notice of the escheat proceedings in each of three newspapers of general circulation in the County of Dauphin, the City of Philadelphia and the City of Pittsburgh. These notices were directed "To all persons whatsoever claiming an interest in the personal property herein referred to" and stated that the "names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary (of Dauphin Co.)". The notices described the property sought to be escheated as consisting of "amounts held and owning by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees, the whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys, having been and remained unknown for seven successive years, and the said moneys having been unclaimed for the said period of seven successive years."

The Western Union submits that this notice cannot apply to cases where the sender or payee has re-

ceived a draft which still remains unpaid, but, as already stated, the draft could not be regarded payment since there was no contract to that effect between the parties. Futhermore, the notice already quoted applies against third parties other than the sender, as witness the statement: "The whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said money."

Therefore, it is beyond refutation that all interested parties are on notice that publication of the indicated notice represents seizure of the *res* by personal service upon Western Union here in Pennsylvania. Nor does it matter that potentially interested parties are not residents of Pennsylvania. It is the very fact that their whereabouts are unknown and have been unknown for over seven years that builds the foundation on which the escheat action rests. We made this clear in *Philadelphia Electric Company* case, 352 Pa. 457: "The Supreme Court of the United States has confirmed the jurisdiction of a State court over intangibles and its power to subject them to escheat even as against possible nonresidents."

Nor would Western Union need to fear that the moneys here involved would be subject to double escheat in New York, the State of its domicile. The decree of escheat here affirmed is naturally subject to the Full Faith and Credit Clause of the United States Constitution, as stated in *Standard Oil Co. v. New Jersey,* 341 U.S. 428: "The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the

same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat."

Decree affirmed, each party to bear own costs.

Mr. Justice Bell took no part in the consideration or decision of this case.

APPENDIX B

Pertinent Pennsylvania Statutes

Act of July 29, 1953, P.L. 986, § 1 (27 Purdon's Statutes § 333), subsections (b), (c) and (d):

"(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"(c) Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"(d) Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same."

In The
Supreme Court of the United States

October Term, 1960
No. 15

THE WESTERN UNION TELEGRAPH COMPANY,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA, BY SIDNEY GOTTLIEB, ESCHEATOR,
Appellee

Appeal from the Supreme Court of Pennsylvania.

STATEMENT IN OPPOSITION TO APPELLANT'S JURISDICTIONAL STATEMENT, AND MOTION TO DISMISS OR AFFIRM

A. Jere Creskoff,
2200 Girard Trust Bldg.,
Philadelphia 2, Penna.,
Robert A. Enders,
1801 North Front Street,
Harrisburg, Pennsylvania,
Michael Edelman,
1616 Walnut St.,
Philadelphia 3, Penna.,
Attorneys for Appellee.

Murrelle Printing Company, Law Printers, 201-3 Lockhart St., Sayre, Pa

Act of May 2, 1889, P.L. 66, § 8 (27 Purdon's Statutes § 43), subsection (a):

"That whensoever any proceedings in escheat have been instituted as aforesaid, the court having jurisdiction in the premises shall upon the filing of any account or statement by any administrator, executor, depository of the court, receiver or other officer of the court, or of any trustee or other person in a fiduciary capacity, of any property or estate, real or personal, escheated or supposed to be escheated, proceed to the audit and adjudication of said account or statement in the same manner as the said court commonly proceeds upon the audit and adjudication of the accounts of executors, administrators and trustees; and shall upon said audit, proceed to inquire and determine whether there has been any escheat or not, and if so, in what manner and for what cause said escheat has occurred, and also what estate, real or personal, has escheated, and what is the value thereof. And the said court shall, in all cases where any real estate has escheated or is alleged to have escheated, before proceeding finally to hear and determine the question of escheat, order and direct notice of said proceedings to be served upon the person or persons in possession of said real estate, in such form as the court shall direct, and the said court shall have full power and authority to summon any person or persons who shall be at any time alleged to have any knowledge touching any escheat or any interest therein, to apear before it, and said court shall have full power and authority to examine any and all of said persons upon their oaths or affirmations, as to any fact or facts, matter or thing touching said escheat, and shall suffer and permit the escheator and all parties claiming to have any interest

in said proceedings, to appear therein by counsel or otherwise, and to produce and examine such witnesses under oath or affirmation, as they may see fit, touching said escheat, and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof."

Act of July 29, 1953, P.L. 986, § 5 (27 Purdon's Statutes § 111), subsections (a) and (b):

"(a) The term 'real or personal property', as used in this act, shall mean and include all real property and all interests therein, whether legal or equitable, and moneys, negotiable instruments, instruments of indebtedness under seal, instruments of indebtedness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible or intangible, and all interests therein, whether legal or equitable.

"(b) The term 'beneficial owner', as used in this act, shall mean and include any beneficial owner, cestui que trust, depositor, bailor, or other person having a beneficial interest in real or personal property."

APPENDIX C

Abandoned Property Laws of States Other Than Pennsylvania

ARIZONA*	—	Ariz. R.S. Title 44-351 et seq.
ARKANSAS	—	Ark. Stat. 1947, Sec. 50-601 et seq.
CALIFORNIA*	—	Code Civ. Pro., Chap. 7, Title 10, Part 3, Sec. 1500 et seq.
KENTUCKY*	—	Ky. Rev. Stat., Chap. 393.
LOUISIANA	—	La. Rev. Stat., Title 9, Chap. 1, Sec. 151 et seq.
MASSACHUSETTS	—	Mass. Ann. Laws, Chap. 200A.
MONTANA	—	Mont. Rev. Code 1947, Sec. 91-502, as amended by Chap. 170, L. 1953; and Sec. 67-102(28).
NEW JERSEY	—	N. J. Rev. Stat., Title 2A:37-1 et seq.
NEW MEXICO*	—	N. M. Laws of 1959, Chap. 132.
NEW YORK	—	N. Y. Abandoned Prop. Law, Sec. 1309 et seq.
NORTH CAROLINA	—	N. C. Gen. Stat. 1952, Sec. 116-20 et seq.
OREGON*	—	Oregon Rev. Stat., Sec. 98.302-98.435 and 98.991.
UTAH*	—	Utah Code Ann., Title 78, Chap. 44.
VIRGINIA*	—	Va. Laws of 1960, Chap. 330.
WASHINGTON*	—	Rev. Code of Wash., Sec. 63.28.070 et seq.
WYOMING	—	Wyo. Comp. Stat. 1945, Sec. 22-203 et seq.

*Modified version of Uniform Disposition of Unclaimed Property Act.

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TABLE OF CITATIONS

STATEMENT IN OPPOSITION TO APPELLANT'S JURISDICTIONAL STATEMENT

NATURE OF THE CASE

The appellant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a New York corporation, authorized to do business in Pennsylvania, and operates in that State, as it does in all other States.

Part of Western Union's business is what it calls a "telegraph money order service". In the course of this service, it receives money from persons who wish to send the money to persons at other places, and transmits the money to the other persons by means of its telegraph money order service.

This transmission of money by telegraph money orders is conducted substantially as follows:

The person who wants to send the money comes to a Western Union office and fills out one of the latter's printed forms, variously denominated in the form as a "Money Transfer" or as a "Money Order". The sender then gives the clerk the amount to be sent, together with the amount of Western Union's charges. The printed form which the sender fills out states that if payment cannot be effected within a specified time (in most cases 72 hours, in all other cases 5 days or 10 days), the money order will be canceled and refund made to the sender. The refund does not include the amount of the company's charges.

Nature of the Case

Upon receiving the amount of the money order from the sender, and the amount of its charge for the service, Western Union then telegraphs to its office geographically nearest the payee named in the money order, directing that office to make payment of the specified amount to the payee, and in most cases, payment is effected.

In a number of instances, however, payment of the moneys to the payees can not be effected, and the senders are entitled to a refund of the amount of their money orders. Sometimes refund to the sender can not be effected.

The appellant contended in the court below that because in many cases it issued drafts to the payee for the amount of the money order, or, in those cases where the payee could not be located, it issued drafts to the sender for the amount of the refund, its obligation on the money orders was discharged, even though the drafts themselves were not paid.

The Supreme Court of Pennsylvania stated that the drafts did not discharge the money order obligations, since there was no contract to that effect between the parties. (Opinion, Supreme Court of Pennsylvania, Jurisdictional Statement, App. A, pp. 54, 59.)

The present case relates to instances in which Western Union received moneys from senders at its places of business in Pennsylvania for transmittal to payees at other places, and not only was unable to effect payment to the payees, but was also unable to effect refund to the senders. More than seven years has elapsed since those senders have been entitled to the refund. During that time, the whereabouts of the persons entitled to the amounts of the

money orders have been unknown, and the said amounts have been unclaimed.

The Commonwealth of Pennsylvania instituted the within proceeding in the State Court for the escheat of these amounts to the Commonwealth.

The Pennsylvania Escheat statute, Act of May 2, 1889, P. L. 66, Sec. 3, as amended by the Act of July 29, 1953, P. L. 986 (Appendix 1, et seq.), provides for the escheat to the Commonwealth of any property "within or subject to the control of the Commonwealth", whenever the owner or beneficial owner of or person entitled to such property, or the whereabouts of such owner, beneficial owner or person entitled, has been unknown for seven years, or the property has been unclaimed for seven years.

The statute provides for proceedings in escheat in a court vested with jurisdiction under the statute. It directs that the Commonwealth shall apply by petition to the court to hear and determine whether an escheat has occurred, that a copy of the petition be served upon the corporation or person by whom the property is held or owing, as respondent, and that the respondent shall, within twenty days after such service, file an answer to the petition.

The statute provides for a hearing, adjudication by the court, the right to any party in interest to file exceptions, and the right of appeal to the Supreme Court of Pennsylvania.

The statute also provides that the Court shall have full power, at any stage of the proceedings, to make such orders relative to advertisements and notices of the proceedings as shall best serve to inform and advise all persons having an interest or who may have an interest in the proceedings, of the pendency thereof.

Nature of the Case

The Commonwealth's petition for escheat in this case named the appellant as respondent, recited the facts upon which the alleged escheat rested, and prayed the Court to hear and determine whether an escheat had occurred and enter a judgment or decree of escheat in favor of the Commonwealth.

Appellant filed an Answer, admitting the receipt of the moneys from senders in Pennsylvania, and averring that after it received the money from the senders in each instance, it telegraphed its office nearest the payee to deliver to the payee a negotiable draft, and that in many instances where the payee could not be located, it issued a negotiable draft to the senders for the refund, that in each instance in which a draft was issued, whether to payee or sender, it was always ready, willing and able to pay the draft, and in the cases where the sender could not be found, it was always ready, willing and able to issue a draft to the sender, and that after six years, any claim of the sender for repayment or for acceptance of the negotiable draft was barred by the Pennsylvania Statute of Limitations.

In addition to the answer on the merits, the appellant set up a number of other defenses, denying that the Commonwealth had any right under the law to a judgment of escheat. It asserted the following defenses:

(1) That only the State of New York, the appellant's State of incorporation, had the right and power to declare an escheat of any claims, debts and demands arising out of its telegraph money order business, and that the said claims, debts or demands were not within or subject to the control of the Commonwealth of Pennsylvania; that if the Pennsylvania statute purported to declare an escheat of such claims, debts or demands to Pennsylvania, the

statute was unconstitutional, in that it deprived the appellant of property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States of America;

(2) That the said claims, debts or demands were barred by the Pennsylvania Statute of Limitations;

(3) That in all instances where negotiable drafts were issued by the appellant to the senders or payees, the appellant thereby fully and completely paid the senders or payees;

(4) That in each instance where, at the time the money orders were sent, the senders or payees resided or were domiciled outside Pennsylvania, or where the senders or payees at that time resided or where domiciled in Pennsylvania, but subsequently changed their residence or domicile to another State, the appellant was or might be subject to multiple liability, because "the state or states of residence or domicile of the said senders or payees have declared or may declare an escheat of any claims, debts or demands of such senders or payees", and that a decree of escheat would deprive the appellant of property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States of America;

(5) That any claims, debts or demands which were the subject matter of the action were the property of the senders or payees of the money orders at their domicile, subject only to the jurisdiction of the State of domicile of the said persons;

(6) That the Act under which the proceeding was brought was contrary to the Constitution of Pennsylvania and the Constitution of the United States of America in

that it made no provision for due and proper notice to payees or senders of the money orders involved, and that the proceeding was likewise contrary to the Constitution of Pennsylvania and the Constitution of the United States of America, in that due and proper notice had not in fact been given to the senders and payees.

The trial court entered an order fixing a time and place for hearing, and in its order also directed that

> "Notice of the time and place fixed for hearing be served upon all persons claiming an interest in the property sought to be escheated by posting in the Office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in the County of Dauphin, one in the City of Philadelphia, and one in the City of Pittsburgh, such notice to be not less than twenty (20) days before the time fixed for hearing.
>
> "The notices shall be in substantially the following form: . . ."

The form included the following statement:

> "The said Petition for Escheat is on file in the Office of the Prothonotary of Dauphin County, and is open to the examination of any party in interest.
>
> "The names and last known addresses of the owners or beneficial owners of, or persons entitled to the said property, the nature and amount of such property are set forth in the records on file in the Office of the Prothonotary."

Notice in the form required was posted and published, as directed by the Court.

Hearing was held at the time and place fixed for hearing, and proclamation was made to all persons having or who might have an interest in the subject-matter of the proceeding to appear and be heard. No claim was made at the hearing.

At the hearing, the appellant abandoned its plea of the Statute of Limitations. Nor did it press its defense that the escheat statute made no provision for due and proper notice to payees and sendees of money orders, but argued only that the notice which was given did not meet the requirements of due process.

After hearing, the trial court made findings of fact and a conclusion of law, and entered a decree directing that a judgment of escheat be entered in favor of the Commonwealth and against the appellant.

In its opinion (Jurisdictional Statement, App. A, 21-41), the court rejected the defense which the appellant had pressed at the hearing.

The court held that the res was within the domain of Pennsylvania, and subject to its control (Opinion of Court of Common Pleas, Jurisdictional Statement, App. A, p. 33), that the res was seized by the personal service in Pennsylvania of a copy of the petition upon the appellant, that the court acted in conformity with the statute in its order directing the notice by publication and posting, and that there was no violation of due process in the notice which was ordered and given. The court said:

> "Publication was the only practicable method by which service could be obtained as to persons who

had any possible interest in these unpaid money orders. As a matter of fact, it was the only method available." (App. A, page 38)

The court said further that there was no impairment of contracts, quoting *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 436:

> "Normally the obligor or holder and the obligee or owner of abandoned property would, as here, have no contractual arrangement between themselves for its disposition in case of the owner's failure to make claim. As the disposition of abandoned property is a function of the state, no implied contract arises between obligor and obligee to determine the disposition of such property. Consequently, there is no impairment of contract by New Jersey's statute, enacted subsequent to the creation of the obligations here under examination, but only the exercise of a regulatory power over abandoned property."

The court held that the Commonwealth had the right to escheat the property, "even as against the claims of the corporation's State of domicile, where the State (Pennsylvania) has had extensive contact with the transactions by which the res was created" (App. A, 33).

The court said also that the Commonwealth could exercise its power of escheat even as against possible nonresident owners, citing *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (App. A, 27).

The court rejected the appellant's argument that if a decree of escheat were entered, the appellant would be subject to multiple liability, quoting *Standard Oil Co. vs.*

New Jersey, 341 U.S. 428, 443: "The Full Faith and Credit Clause bars any double escheat".

The appellant filed exceptions to the Findings of Fact, Conclusions of Law and Decree of the trial court. In none of these exceptions did the appellant state the reason for the exception, or assert any constitutional objection.

The exceptions were argued before the lower court en banc and were dismissed, except for a formal correction as to the amount of the judgment. In its opinion (Jurisdictional Statement, App. A, 42-48), the Court said:

> "We have herein discussed only the matters raised in the respondent's exceptions. At the oral argument on the exceptions, respondent argued many of the points that it presented at its first argument before the Court en banc. Since these points, although reargued, were not raised by exceptions, it is not necessary to take note of them at this stage of the proceedings. However, we have reconsidered all of the respondent's reargruments and are of the view that the Court has disposed of these matters in its opinion of December 15, 1958."

Appellant then appealed to the Supreme Court of Pennsylvania, which affirmed the court below, in an opinion filed June 29, 1960 (Jurisdictional Statement, App. A, 49-60).

In its Brief filed in the appeal to the Supreme Court of Pennsylvania, the appellant stated that there were three questions for the Court's determination, as follows:

> "1. Where payors who are not Pennsylvania residents pay money to a New York corporation in Pennsylvania, and the corporation agrees to deliver

negotiable drafts in payment therefor to non-resident payees and makes payments or refunds by means of negotiable drafts or other instruments of indebtedness, does a petition for escheat limited solely to the moneys paid, designate any property within or subject to the control of Pennsylvania, where the moneys were sent out of Pennsylvania and mingled with the corporation's general funds?

"2. Where a petition for escheat seeks an escheat of moneys paid to a party which, in discharge of its obligations arising from the payments, has issued negotiable drafts or other instruments of indebtedness that are still outstanding, does a decree which is limited by the petition to a money judgment bar future claims?

"3. Where an escheator proceeds against a New York corporation, but does not designate in his petition for escheat a seizable res in Pennsylvania, does notice by publication that fails to notify all possible claimants bar other claimants?"

1. In its appeal brief filed in the Supreme Court of Pennsylvania, the appellant separated its first questions into two parts; one that the petition in escheat sought to recover the specific moneys which appellant had received in Pennsylvania for its money orders, and the other that the money order transactions created a debtor-creditor relationship which was terminated by the issuance of the drafts.

The Supreme Court of Pennsylvania rejected the appellant's premise that the petition in escheat was directed to the moneys which the appellant had received at the time of the money order transactions, and declared that

the subject-matter of the petition and of the escheat was the unclaimed obligation of the appellant arising from the money order transactions (Opinion, Jurisdictional Statement, App. A, 54).

The Supreme Court of Pennsylvania also held that the issuance of drafts did not operate as a discharge of the said obligations.

No federal question was involved in these determinations.

2. The second question submitted by the appellant was based on its assumption that the appellant had discharged its obligations on the money orders by the issuance of drafts.

As stated above, the Supreme Court rejected the appellant's assumption, and held that the money order obligations were not discharged by the drafts, since there was no agreement between the senders of the money orders and the appellant that the drafts were to constitute payment, and the drafts themselves were not paid.

This determination by the Supreme Court of Pennsylvania did not involve any federal question.

3. The third question presented by the appellant to the Supreme Court of Pennsylvania was based on the premise that there was no seizure of the res, and therefore notice by publication and posting did not constitute notice as to what property was to be escheated. Again, this premises was based upon the appellant's assertion that the Commonweauth sought to escheat the specific moneys received by the appellant from the senders of the money orders. However, as stated above, the Supreme

Court of Pennsylvania held that the res consisted of the unclaimed obligations owing by the appellant, and said:

> "We inevitably come to the conclusion that the res of the escheat proceedings is, contrary to the appellant's contention, within the control of the Commonwealth. It is within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the courts of the Commonwealth. Personal service of the petition on offices of the Western Union within the confines of the Commonwealth constituted a seizure of the res which is the subject of the escheat." (Opinion, Jurisdictional Statement, App. A, 34)

This determination did not involve any federal question.

In its argument before the Supreme Court of Pennsylvania on this third question, the appellant went beyond the question itself, and argued that the notice directed by the court was a notice to senders only "and to no other parties whose rights are involved".

It argued that while the notice was directed "to all persons whatever claiming an interest in the personal property herein referred to", the notice was actually limited to the senders because the notice described the property sought to be escheated as "amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money order and refundable to the senders thereof".

While the appellant put the question as though a matter of law were involved, actually the question was as to

the meaning of the language of the notice. The court's interpretation of the language of the notice, while adverse to the appellant's contention, did not present a federal question.

GROUNDS OF APPEAL SET UP BY APPELLANT

The appellant's grounds of appeal are set forth under the heading "Questions Presented" (Jurisdictional Statement, pages 3, 4, 5).

It sets forth three questions by number, beginning on page 3, but precedes these questions with an unnumbered opening paragraph containing a general statement which, if pertinent, would properly belong in its "Statement of the Case", and in this prefatory paragraph sets forth a suggestion of two questions, other than the numbered questions. One of these two prefatory questions hints at the possible retroactivity of the Pennsylvania escheat statute; the other declares that in the transactions involved in this case, there is a conflict of escheat laws between Pennsylvania and other states.

These two prefatory questions, thus insinuated in the opening paragraph, are herein referred to by the appellee merely to point out that they were not raised at any time in the court of first instance or in the appeal to the Supreme Court of Pennsylvania, and that no federal questions are thereby presented. We go, then, to the numbered questions.

1. Question No. 1, set forth by the appellant in the first numbered paragraph under its "Questions Involved", is whether the Commonwealth of Pennsylvania has the power to escheat property under and subject to its control, if the residence or domicile of the owners is unknown and may be in States other than Pennsylvania (Jurisdictional Statement, pages 3, 4).

2. The second question (Jurisdictional Statement, page 4) is whether the escheat to the Commonwealth of Pennsylvania will protect the appellant from later claims, either by the owners or by other States.

3. The third question (Jurisdictional Statement, pages 4, 5) is whether the Pennsylvania statute is repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF GROUNDS MAKING AGAINST JURISDICTION

I. Failure of the Appellant To Present the Question to the Supreme Court of Pennsylvania (Third Question)

The third ground of appeal stated by the appellant is that the Pennsylvania statute is repugnant to Section 1 of the Fourteenth Amendment to the constitution of the United States.

While the appellant's Answer to Petition for Escheat asserted that the Pennsylvania escheat statute was contrary to the Constitution of the United States of America in making no provision for due and proper notice to claimants, the appellant did not thereafter insist on this defense. In the trial before the court of first instance, in the exceptions filed by the appellant to that Court's Findings of Fact, Conclusions of Law and Decree, and in the appeal to the Supreme Court of Pennsylvania, the appellant did not pursue this objection to the Pennsylvania statute. It can not now raise this objection in the present appeal.

It is to be noted also that in the Jurisdictional Statement, while under the heading "Questions Presented", the appellant raises the question of the constitutionality of the statute, as related to notice, the appellant's discussion under the title "Substantiality of Questions Involved" does not deal with the constitutionality of the statute, but only with the question whether the notice which was given met with the requirements of due process.

The question thus presented by the appellant upon this appeal was neither timely nor properly raised.

The mere claim of such objection never afterward brought to the attention of the trial court or of the appellate court is not sufficient. "Error assigned but not noticed or relied upon in the brief or argument of counsel will be regarded as waived". *Hulbert vs. Chicago*, 202 U.S. 275.

In *Penna. Rd. Co. vs. Illinois Brick Co.*, 297 U.S. 447, 462, 463, the court said:

> "As the highest court of the State declined to consider them because not raised in the circuit court or presented to it in accordance with practice that unquestionably was well established and reasonable, this court is within jurisdiction to consider either of them."

In *Cox vs. Texas*, 202 U.S. 446, the court said:

> "It is proper to say that Art. I, Sec. 8, is referred to in the assignments of error before the Court of Appeals and before this Court. But it does not appear that the Court of Appeals dealt with the point, and probably it refused to do so on the ground that the section was not relied upon before the trial court."

In *Louisville vs. N. R. R. Co. vs. Woodford*, 234 U.S. 46, the court said:

> "The decisions of this court not only have repeatedly held that a federal right, in order to be reviewable here, must be set up and denied in the state court, but have often held that such claim of denial is not properly brought to the attention of this court where it appears that the state court declined to pass upon the question because it was not raised in the trial court as required by the state practice."

Since this question was neither timely nor properly insisted upon before the trial court or the Supreme Court of Pennsylvania, and was not considered as dealt with there, the appellant has not established that the Supreme Court of the United States has jurisdiction.

II. The Questions Presented Have Been Foreclosed by Previous Decisions

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Where a federal question which is presented on appeal has been decided by it in previous cases, the Supreme Court of the United States will not exercise jurisdiction of the appeal.

Leonard vs. Vicksburg S. & P. Rd. Co., 198 U.S. 416;

King vs. West Virginia, 216 U.S. 92;

MacDonald vs. Oregon Navigation Co., 233 U.S. 665;

City of Boston vs. Jackson, 260 U.S. 309;

Tidal Oil Co. vs. Flanagan, 263 U.S. 444;

Fleming vs. Fleming, 264 U.S. 29.

1. The first question presented is whether Pennsylvania may constitutionally escheat obligations of a foreign corporation incurred in transactions in Pennsylvania, where the domicile of the owners of the obligation is unknown and may be outside Pennsylvania.

The question is foreclosed by previous decisions of the Supreme Court of the United States, which hold that

the power of the State over such obligations is not based upon the residence or domicile of the parties to the transaction, but rests upon the fact that the transactions were carried on and the obligations came into being in the State, and under the protection of its laws.

In *Curry vs. McCanless,* 307 U.S. 357, 365-66, the court held that a State could levy a tax based on the activities of a foreign corporation in that State, saying:

> "Such rights (not related to physical things) are but relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in courts. The power of government over them and the protection which it gives them cannot be exerted through control of a physical thing. This can be made effective only through control over and protection afforded to those persons whose relationships are the origin of the rights."

In *International Shoe Co. vs. Washington,* 326 U.S. 310, 320, the court stated:

> "The activities carried on in behalf of the appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the State, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to

> our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there."

In *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 439, the court said:

> "Since choses in action have no spatial or tangible existence, control over them can 'only arise from control or power over the person whose relationships are the source of the obligation'. Estin vs. Estin, 334 U.S. 541, 548. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the choses in action enables the court with such control to dispose of the rights of the parties to the intangible. . . . The rights of the owner of the stock and dividends comes within the reach of the court by the notice, i.e. service by publication; the rights of the appellant by personal service."

These cases make it clear that the State's power over obligations arising from transactions in the State does not rest upon the domicile of the parties, but on the contacts or ties which the State has with the transactions.

In *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 438, 439, the court said further:

> "As a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a State, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, *belonging to unknown owners* . . . Escheat is permitted against persons *whose addresses or existence is unknown.*" (Italics ours.)

In *U. S. vs. Klein*, 106 F. 2d 213 (certiorari denied 308 U.S. 618), the court said:

> "Obviously an escheat proceeding may not be defeated merely because the unkown owners cannot be located."

See also *Security Savings Bank vs. California*, 263 U.S. 282, and *Anderson Natl. Bank vs. Luckett*, 321 U.S. 233, holding a State could escheat even against non-resident depositors.

See also *Pennington vs. Bank*, 243 U.S. 269, where the court said:

> "The Fourteenth Amendment did not, in granting due process of law, abridge the jurisdiction which a State possessed over property within its border, *regardless of the residence or non-residence of the owner.*" (Italics ours.)

The foregoing cases make it clear that the State's power and control over obligations arising from transactions carried on in the State do not rest upon the domicile of the parties, but upon the contacts of the State with the transactions conducted in the State and under the protection of its laws.

While the appellant did not, in the State courts, raise any question as to retroactivity, it seeks to introduce this element into its first question by the assertion that "all the moneys which had been paid to the New York corporation in the transactions involved having been transferred to New York before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted".

Again the appellant seeks to imply that the Commonwealth's petition was directed at the very moneys received by the appellant at the time of the money order transactions. This implication has been fully dealt with above, and has been shown to have no place in this appeal.

If the question of retroactivity were to present a federal question, the appellant could not present it on this appeal, not having raised the question below.

However, even if there were a federal question, properly raised, the question itself is foreclosed by the *Standard Oil* case. There the court said:

> "There is no impairment of contract by New Jersey's statute, enacted subsequent to the creation of the obligations here under examination, but only the exercise of a regulatory power over abandoned property."
>
> *Standard Oil Co. vs. New Jersey*, 341 U.S. 428.

The appellant itself recognizes in its question that the earlier decisions have affirmed the power and control of a State over obligations created by transactions in that State. The appellant therefore seeks to disregard the determination of the Pennsylvania courts in this case as to matters which do not involve federal questions, in order to arrive at a federal question. This it cannot do. The appellant cannot by this means escape the decisions which foreclose this appeal.

2. The second question presented by the appellant is whether the escheat to the Commonwealth of Pennsylvania will protect the appellant from later claims, either by the owners or by other States.

This question is foreclosed by *Standard Oil Co. vs. N. J.*, 341 U.S. 428, in which the court said:

> "Full Faith and Credit.—Finally, we shall deal with appellant's objection that this statutory escheat takes its property without due process because it does not protect it from claims by the owners. The argument is that the protection afforded by the New Jersey escheat statute is inadequate in that (it) is no protection beyond the state against owners of the escheated shares or against escheat or conservation actions by other states against Standard Oil of New Jersey for the same debts or demands . . .
>
> "We have indicated above that we consider the notice to the stockholders adequate to support a valid judgment against their rights as well as those of the Company. The res is the debt and the same rule applies as with tangible property. The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat."

3. As its third numbered question (Jurisdictional Statement, 4, 5), the appellant asks whether the Pennsylvania statute is repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania, naming no claimants of the money

residing there or elsewhere, even where the last known addresses of possible claimants are available.

In framing this question, the appellant has combined matters which do not involve federal questions with matters which appellant indicates do involve federal questions.

As part of its question, the appellant states that the petition filed under the escheat statute does not identify a res in Pennsylvania, and does not result in the seizure of any property in Philadelphia.

The appellant seeks first to raise the question of situs, a concept which the case of *Standard Oil Co. v.s. New Jersey*, 341 U.S. 428, discussed and termed a fiction, and explained that the basis of a court's power is control. The court there said:

> "We see no reason to doubt that where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can only arise from control or power over the persons whose relationships are the source of the rights and obligations. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to such intangibles. . . . The rights of the owner of the stock and dividends (intangible) comes within the reach of the court by the notice, i.e., service by publication; the rights of the appellant by personal service. That power enables the escheating state to compel the issue of the certificates or payment of the dividends."

The next element the appellant introduces into this question is that of identification of the res. This is a repetition of a non-federal question included as part of appellant's second question in this appeal, and as pointed out above, the Supreme Court of Pennsylvania affirmed the court below in identifying the res as the debts and obligations of the appellant arising out of its money order transactions. This was precisely what the Supreme Court of the United States said in *Standard Oil Co. vs. New Jersey*, 341 U.S. 428: The res is "the debts or demands due to the escheated estate", and "It is its (appellant's) obligation to pay to the escheated estate that is taken".

Next the appellant asserts that there is no seizure of any property in Pennsylvania. However, the appellant does not deny that there was personal service of the petition upon it in Pennsylvania, and, as the court said in *Security Savings Bank vs. California*, 263 U.S. 282: "Personal service on the bank effected seizure of the deposit".

In *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, the court reiterated its statement in the *Security Savings Bank* case, and said:

> "No matter where the appellant's assets may be, since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation."

These three parts of the appellant's third question are not federal questions, but if they be, they are foreclosed by the above decided cases.

Since these three questions, that of control, identification of the res, and seizure of the res, are component parts of the appellant's third numbered question, the question would fall in its entirety, unless we treat the three sub-

ordinate questions as independent questions, and look at the last subordinate part of the third question as an independent question.

This last portion of the third question is whether the notice by publication complied with due process.

The appellant asserts that no notice has been given except by publication only in Pennsylvania, naming no claimants of the money, residing there or elsewhere, even where the last known addresses of possible claimants are available. It declares that the notice is further lacking because there was no attempt to notify these senders and payees by mail.

In contending that such notice by mail should have been given, the appellant would require the Commonwealth to do what the appellant itself has made clear would be a fruitless act. In paragraph 13 of its Answer (R. 10a), the appellant said:

> "In each instance in which the defendant (appellant) at its offices and places of business in Pennsylvania received moneys from a person desiring to send a money order and did not effect payment or repayment as set forth in paragraph 11 hereof for more than seven years after the sender was first entitled to such repayment, the whereabouts of the sender have been unknown to the defendant for more than seven years . . . ."

And in paragraph 14 (R. 11a) of its Answer, the appellant stated that in each instance in which it was unable to repay a sender by issuing to him a negotiable draft, and in each instance in which a negotiable draft was issued to the sender and it was unable to pay the draft, it was

unable to do so "because the whereabouts of the sender were unknown to it".

If notice by mail would have been anything but a futile gesture, the appellant could have notified such persons by mail, and, if effective, such claims would not be in this case. However, there is no suggestion that the appellant did notify these persons by mail, and the reason it did not do so was because it would have been useless. The last known address had no meaning, because, as the Supreme Court of Pennsylvania said, the senders had "vanished into the mysterious sea of Whereabouts Unknown."

In determining the adequacy of notice by publication, the question is not whether the Commonwealth undertook every conceivable form of notice, but whether the form of notice complied with due process.

In *Anderson vs. Luckett*, 321 U.S. 233, in an escheat action, the court said:

> "What is due process in a procedure affecting property interest must be determined by taking into account the purpose of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case."

In *Dent vs. West Virginia*, 129 U.S. 114, 124, the court said:

> "Legislation must necessarily vary with the different objects upon which it is designed to operate. It is sufficient, for the purpose of this case, to say that legislation is not open to the charge of depriving one of his rights without due process of law, if it be

general in its operation upon the subjects to which it relates, and is enforceable in the usual modes established in the administration of government with respect to kindred matters, that is, by process or proceedings adopted to the nature of the case."

In *Standard Oil Co. vs. New Jersey*, supra, the court cited *Security Savings Bank vs. California*, 263 U.S. 282, and said:

> "It was held, p. 287, that (the personal service on the bank effected seizure of the deposit and) the publication of the summons was effective as similar publication would be in litigation involving unknown persons with possible claims to property".

The *Standard Oil Co.* case then cited and followed *Mullane vs. Central Hanover Trust Co.*, 339 U.S. 306, 317, in which it was said:

> "This Court has not hesitated to approve of resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning. . . .
>
> "Accordingly we overrule appellant's constitutional objections to published notice insofar as they are urged in behalf of any beneficiaries whose interests or addresses are unknown to the trustee".

The court said also in the *Mullane* case:

> "It has been recognized that in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits, and creates no constitutional bar to a final decree foreclosing their rights. . . .

"However great the odds that publication will never reach the eyes of such unknown parties, it is not in the typical case much more likely to fail than any of the choices open to legislatures endeavoring to prescribe the best notice practicable."

Certainly publication and posting was not more likely to fail than the method suggested by the appellant, to give notice by mail to persons whose whereabouts the appellant itself declares are unknown.

The court said in the *Standard Oil* case:

"The sound reasons stated in the foregoing cases for deeming the notices there given adequate to bind interested persons in the respective proceedings, lead us to the conclusion that the notice by publication in this case was adequate."

The appellant complains that publication was made only in Pennsylvania. A similar objection was made in *Security Savings Bank vs. California*, 263 U.S. 282, where the only publication required by the statute was in Sacramento, the State Capitol, although the respondent bank did not have a place of business there. The bank objected to publication in the State Capitol only.

In the present case, the publication was not only in the State Capitol, but was made in the two largest cities of the State as well.

The appellant, in attacking the adequacy of the published notice, overlooks the fact that there was another form of notice, sometimes considered to be sufficient without more, the notice given by the seizure of the res. As said by the lower court in *Hollingsworth vs. Barbour*, 29 U.S. 466, 475, and affirmed by the Supreme Court:

> "The law regards the seizure of the thing as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice."

The principle was reaffirmed in ***Anderson National Bank vs. Luckett***, supra, at page 245. The court there said:

> "In all such proceedings the seizure itself is itself a form of notice of the claim asserted, to those who may claim an interest in the property. See Corn Exchange Bank vs. Coles, 280 U.S. 218, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure."

What is seizure of a debt or other obligation is explained in *Security Savings Bank vs. California*, supra, which stated:

> "Seizure of the res is effected by the personal service upon the bank."

Cited with approval in *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 439, which said:

> "Since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation."

The appellant's third question is foreclosed by the decisions above cited.

It is submitted that the questions presented in this appeal have already been definitely determined by the Supreme Court of the United States, that no substantial question is presented by this appeal entitling appellant to involve the jurisdiction of the Supreme Court of the United States, and that the appeal should be dismissed.

MOTION TO DISMISS OR AFFIRM

Wherefore, the appellee respectfully moves that the within appeal be dismissed or that the judgment of the Supreme Court of Pennsylvania be affirmed.

A. JERE CRESKOFF,
ROBERT A. ENDERS,
MICHAEL EDELMAN,
Attorneys for Appellee.

APPENDIX

PENNSYLVANIA ACT OF MAY 2, 1889, P.L. 66, AS AMENDED BY ACT OF JULY 29, 1953, P.L. 986

ESCHEATS

* * * * * * * * *

Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions

and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

* * * * * * * * *

The jurisdiction in all cases of escheat under the provisions of this act, shall be vested in the courts of this Commonwealth, as follows, namely:

* * * * * * * * *

Jurisdiction shall be vested in the court of common pleas of the county in which service of the petition of escheat may be made upon the corporation or other person by whom the property is held or owing, in the manner provided under the provisions of the Pennsylvania Rules of Civil Procedure for the service of a writ of summons or complaint in an action of assumpsit.

The Court of Common Pleas of Dauphin County shall have concurrent jurisdiction in all cases of escheat under the provisions of this act in which jurisdiction is vested in the courts of common pleas.

* * * * * * * * *

Whensoever any escheator shall be duly commissioned by the Department of Revenue, of and concerning any property, real or personal, escheated or supposed to have escheated to the Commonwealth under the provisions of this act, he shall apply by petition to the court having jurisdiction in the premises to hear and determine whether an escheat has occurred or not, and shall in his petition set forth the facts of his appointment and the nature and character of the alleged escheat, and shall also state, as far as he conveniently can, the location, character, and amount of the property, real and personal, alleged to have

escheated, together with the name and address of the person or persons having the same in his or their possession.

* * * * * * * * *

A copy of the petition shall be served upon the corporation or other person by whom the property is held or owing as respondent, within the time and in the manner provided under the provisions of the Pennsylvania Rules of Civil Procedure for the service of a writ of summons or complaint in an action of assumpsit. The respondent shall, within twenty days after service of the said petition, file an answer thereto, setting forth the name and address, if known, of every person having an interest in the property, together with any other facts relative thereto of which the respondent shall have knowledge, and whether any claim to the property has been made upon or against the respondent. Any averment in the petition not specifically denied in the answer shall be taken as admitted.

Any person having or claiming an interest in any real or personal property as to which a petition of escheat has been filed may, on or before the time fixed for hearing or at such subsequent time as may be allowed by order of the court, file with the court a written notice of claim, in the form of an answer to the petition, and shall serve a copy of such answer upon the escheator, and shall, at the time fixed for hearing, appear in person or by duly authorized counsel and substantiate his claim or otherwise show cause why such property or any part thereof should not be adjudged to have escheated to the Commonwealth. Any averment in the petition not specifically denied in the answer shall be taken as admitted.

* * * * * * * * *

Whensoever any proceedings in escheat have been instituted as aforesaid, the court having jurisdiction * * * shall have full power and authority to summon any person or persons who shall be at any time alleged to have any knowledge touching any escheat or any interest therein, to appear before it, and said court shall have full power and authority to examine any and all of said persons upon their oaths or affirmations, as to any fact or facts, matter or thing touching said escheat, and shall suffer and permit the escheator and all parties claiming to have any interest in said proceedings, to appear therein by counsel or otherwise, and to produce and examine such witnesses under oath or affirmation, as they may see fit, touching said escheat, and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof.

The escheator may, either before or after filing a petition in escheat, file a petition in the Court of Common Pleas of Dauphin County or in the court of common pleas of a county in which the respondent may be served in the manner provided for the service of a summons or complaint in an action of assumpsit, praying for depositions, discovery and inspection, and the procedure upon such petition shall be in accordance with the Pennsylvania Rules of Civil Procedure relating to depositions, discovery and inspection.

* * * * * * * * *

The term "real or personal property", as used in this act, shall mean and include all real property and all interests therein, whether legal or equitable, and moneys, ne-

gotiable instruments, instruments of indebtedness under seal, instruments of indebtedness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible or intangible, and all interests therein, whether legal or equitable.

The term "beneficial owner", as used in this act, shall mean and include any beneficial owner, cestui que trust, depositor, bailor, or other person having a beneficial interest in real or personal property.

* * * * * * * * *

Whenever any adjudication or finding in escheat shall have been filed by any court, exceptions may be filed thereto by the escheator or any other party or parties interested in said proceedings . . . and if said exceptions are, after hearing, sustained in whole or in part, the court shall forthwith proceed to file an amended adjudication or finding, in accordance with its determination upon such exceptions.

The Commonwealth, or any person aggrieved or claiming to be aggrieved by a final adjudication in escheat, may appeal from the same to the Supreme Court.

IN THE

Supreme Court of the United States

NO. ~~543~~ 15

OCTOBER TERM, 1960

THE WESTERN UNION TELEGRAPH COMPANY,
Appellant,
v.
COMMONWEALTH OF PENNSYLVANIA, by
SIDNEY GOTTLIEB, Escheator, Appellee.

Appeal From the Supreme Court of Pennsylvania

BRIEF IN REPLY TO APPELLEE'S STATEMENT IN OPPOSITION AND MOTION TO DISMISS OR AFFIRM

JOHN G. BUCHANAN
JOHN G. BUCHANAN, JR.
REX ROWLAND
1800 Oliver Building
Pittsburgh 22, Pennsylvania
JOHN H. WATERS
60 Hudson Street
New York 13, New York
Attorneys for Appellant

BUCHANAN, INGERSOLL, RODEWALD,
KYLE & BUERGER
Of Counsel

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

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I.

The Questions Presented on This Appeal Are Federal Questions Determined by the Supreme Court of Pennsylvania.

The appellee incorrectly argues that the determination by the Supreme Court of Pennsylvania of the three questions which the appellant presented to that court did not involve federal questions. The three questions are set forth at pages 9 and 10 of the Appellee's Statement in Opposition to Appellant's Jurisdictional Statement, and were summarized by the Supreme Court of Pennsylvania as follows (R. 154; App. A, 51): "(1) The

Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in Escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process." These questions were raised initially before the trial court in the appellant's answer to the petition (for record references, see Appellant's Jurisdictional Statement, p. 6).

(1) The first question presented to the Supreme Court of Pennsylvania attacked the trial court's holding that the property designated in the petition for escheat was, in the language of the Pennsylvania Escheat Act, "within or subject to the control of the Commonwealth." Act of July 29, 1953, P.L. 986, § 1 (27 Purdon's Statutes § 333). The appellant contended that since the petition was directed solely to specific moneys which had been sent out of Pennsylvania and mingled with the appellant's general funds, there was no escheatable property within or subject to the control of Pennsylvania; that the lower court, in holding to the contrary, interpreted the quoted language of the Pennsylvania Escheat Act to cover property outside the jurisdiction of Pennsylvania; and that the statute, as so applied, taking this property from the appellant, did so in violation of the jurisdictional requirements of due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States. See also appellant's answer (R. 13-14). The appellant likewise contended that where it had issued negotiable drafts in payment of money order transactions, its obligation was suspended until the drafts were presented. The Supreme Court of Pennsylvania held that the Commonwealth of Pennsylvania

had sufficient contact with the transactions to warrant a finding that funds representing the amounts of money orders involved were subject to the control of the Commonwealth under the Pennsylvania Escheat Act. We maintain that this violated due process. The first question was in its every aspect a federal question.

(2) The second question presented to the Supreme Court of Pennsylvania raised the issue of whether the petition for escheat under the Pennsylvania Escheat Act, the petition being limited solely to money, enabled the Court to enter a judgment in escheat which would protect the appellant from future claims. The appellant argued that since the Act defined escheatable property to mean "choses in action, claims, debts, demands," no judgment could be entered under the Act which would protect the appellant from possible future claims by senders, payees and other states and foreign countries, and that at most it precluded only another escheat proceeding by the Commonwealth of Pennsylvania for money. This second question, therefore, presented directly to the Supreme Court of Pennsylvania the question whether the Pennsylvania Escheat Act, in causing the escheat of amounts under a petition directed solely to money, deprived the appellant of property without due process of law contrary to Section 1 of the Fourteenth Amendment, in that it left the appellant open to "claims, debts and demands" of other states or third persons.

(3) We submit that the summary by the Supreme Court of Pennsylvania of the third question which was presented to that court and which we have quoted above, sufficiently answers the appellee's contention that no federal question was involved in the court's determina-

tion of that question. We shall, however, discuss this point in Part II of this brief.

With regard to the appellant's third question, the appellee correctly states that the appellant did not raise in the Supreme Court of Pennsylvania a contention that the Pennsylvania Escheat Act makes no provision for due and proper notice. But the appellee incorrectly assumes that the appellant is now presenting this question. On the contrary, the issue which we raise in our third question is whether the notice, as published pursuant to the Pennsylvania Escheat Act, met the requirements of due process. The appellant presented this question to both the Common Pleas Court and the Supreme Court of Pennsylvania, and both courts ruled against the appellant (R. 16; App. A, 38, 51, 59).

The notice section of the Pennsylvania Escheat Act provides (App. B, 63) that the trial court "shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof." The trial court in our case ordered that notice be given, and a notice purportedly in accord with the Act was published. The appellant contends that the notice did not meet the requirements of due process. As stated in *Dahnke-Walker Milling Company v. Bondurant*, 257 U.S. 282, 290, "As the state court applied and enforced to the plaintiff's disadvantage a state statute the plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error." *Ward & Gow v. Krinsky*, 259 U.S. 503, 510; *Cudahy Packing Co. v. Parramore*, 263 U.S. 418,

422; cf. *Fiske v. Kansas,* 274 U.S. 380, 385. Since the appellant seasonably insisted that the notice provision of the Pennsylvania Escheat Act as applied was repugnant to Section 1 of the Fourteenth Amendment, this Court has jurisdiction of this appeal.

II.

Previous Decisions Have Not Foreclosed the Questions Presented.

(1) With regard to the appellee's contention that the appellant's first question presented to this Court has been foreclosed by previous decisions, we submit that our discussion of this question in our Jurisdictional Statement (pp. 11-15) very clearly shows that the question is almost identical with that reserved by this Court in *Connecticut Mutual Life Insurance Co. v. Moore,* 333 U.S. 541. No case decided by this Court has determined the constitutionality of a statute of a state which causes the escheat of amounts representing sums involved in transactions between a corporation not domiciled in the state and unknown persons who are not shown ever to have been residents of that state. That is the question here.

The considerations involved in tax cases, such as *Curry v. McCandless,* 307 U.S. 357, and *International Shoe Co. v. Washington,* 326 U.S. 310, cited by the appellee, are of no point in an escheat case. Many states may tax property; only one can cause its escheat. See dissenting opinion of Mr. Justice Frankfurter in *Connecticut Mutual Life Insurance Co. v. Moore,* 333 U.S. 541, 522; and compare *Texas v. Florida,* 306 U.S. 398.

Nor is *Standard Oil Co. v. New Jersey,* 341 U.S. 428, in point, since there the State of New Jersey had proceeded against a New Jersey corporation, not a foreign corporation. Similarly, in *Security Savings Bank v. California,* 263 U.S. 283, cited by the appellee, the State of California sought the escheat of abandoned bank deposits in a bank which was a California corporation and had its only place of business in that state. The *Security Savings Bank* case and the other cases involving bank deposits on which the appellee relies are not determinative of our case, for the reason that there the escheating states were able to seize and did seize abandoned bank deposits of the banks in the states, those deposits being "a part of the mass of property within the state whose transfer and devolution is subject to state control": *Anderson National Bank v. Luckett,* 321 U.S. 233, 241. In *United States v. Klein,* 303 U.S. 276, the Commonwealth of Pennsylvania was able to escheat the funds because they were within the control of a United States District Court in Pennsylvania. No claimant could secure the funds without first coming into Pennsylvania and establishing his claim before that court.

While we are not contending that the Pennsylvania Escheat Act is unconstitutional because it is retroactive, we do think that the fact that the statute was enacted more than seven years after the money in the money order transactions had been sent to New York is relevant to a determination of the constitutionality of the Act on the claim of lack of jurisdiction. The Supreme Court of Pennsylvania has declared that the Act is constitutional even though a petition for escheat under the Act is directed to specific money which is no longer in Pennsylvania. The fact that the money had been sent out of the

state long before the passage of the Act shows that the Pennsylvania Supreme Court has given to the Act a latitude of interpretation far beyond the limits of due process.

(2) We have already answered appellee's argument that our second question is foreclosed by *Standard Oil Co. v. New Jersey,* 341 U.S. 428. There the court decided that the State of New Jersey could constitutionally cause the escheat of property of a domestic corporation; here the appellant is not a domestic but a foreign corporation. As the Court stated in the *Standard Oil* case, 341 U.S. 428, 442, in the paragraph of its opinion immediately preceding the paragraph quoted in the appellee's brief:

> "We think that stock certificates and undelivered dividends thereon may also be abandoned property subject to the disposition of the *domiciliary state of the corporation* when the whereabouts of the owners are unknown for such lengths of time, and under such circumstances, as permit the declaration of abandonment. That rule is applicable here." (Italics ours.)

(3) In an attempt to show that our third question is foreclosed by prior decisions, the appellee seeks to split the question into separate elements, to pick and choose as to each so-called element language favorable to its argument from among decisions involving jurisdictional facts entirely different from those in our case, and then to say that because each of the elements (in a different context) has been otherwise decided the question of defective notice in this case has been foreclosed. In addition, the appellee avers that the appellant has

included in this question matters which do not involve federal questions. But a question of whether due notice was given in any particular case cannot be presented *in vacuo*: "What is due process in a procedure affecting property interests, must be determined by taking into account the purpose of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case." *Anderson National Bank v. Luckett*, 321 U.S. 233, 246. Accordingly, the question of whether there was adequate notice involves the determination of the question whether there was a seizable res identified in the petition, since, as the Court stated in *Security Savings Bank v. California*, 263 U.S. 282, 287: "[T]he essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard." There was no seizable res designated in the petition for escheat and consequently there was no seizure. Also involved in the question of the adequacy of the notice is whether the notice was directed to all possible claimants, and as we have pointed out in our Jurisdictional Statement (p. 19), the notice was directed only to senders and did not apprise payees and holders of outstanding negotiable drafts of the pendency of the escheat action. Then, finally, we have shown that names and last known addresses of possible claimants were of record but were not included in the notice, so that under *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306, the notice did not meet the requirements of due process. It is no answer for the appellee to say that if the names and last known addresses were available, the appellant should have made an effort to notify them by mail. There is nothing in the

record to show whether the appellant did or did not mail a notice to all possible claimants, and it is submitted that the appellee cannot rely upon the action or inaction of the appellant in order to validate a defective notice in a judicial proceeding.

CONCLUSION

We trust that we have shown that substantial and novel jurisdictional questions are here involved. We need not have shown so much; for an appeal will not be dismissed for want of a substantial federal question unless the questions of the appellant are "so clearly not debatable and utterly lacking in merit as to require dismissal for want of substance." *Hamilton v. Regents of the University of California,* 293 U.S. 245, 258. See also *Alton R. Co. v. Ill. Com.,* 305 U.S. 548, 550; *Cheseboro v. Los Angeles County Flood Control Dist.,* 306 U.S. 459, 463. We submit, therefore, that the Supreme Court of the United States has jurisdiction of the appeal, that substantial questions are presented, and that appellee's motion to dismiss or affirm should be denied.

Respectfully submitted,

JOHN G. BUCHANAN
JOHN G. BUCHANAN, JR.
REX ROWLAND
1800 Oliver Building
Pittsburgh 22, Pennsylvania
JOHN H. WATERS
60 Hudson Street
New York 13, New York
Attorneys for Appellant

BUCHANAN, INGERSOLL, RODEWALD,
KYLE & BUERGER
Of Counsel